

NO. 64058-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

NICHOLAS LANDSIEDEL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUE</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS.....	2
2. SUBSTANTIVE FACTS.....	3
C. <u>ARGUMENT</u> .....	7
1. THE TRIAL COURT PROPERLY CONCLUDED THAT LANDSIEDEL WAS NOT ELIGIBLE FOR A SSOSA.....	7
2. FINDINGS OF FACT AND CONCLUSIONS OF LAW HAVE NOW BEEN FILED, AND THERE IS NO SHOWING THAT LANDSIEDEL HAS BEEN PREJUDICED.....	13
D. <u>CONCLUSION</u> .....	14

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

Davis v. Dep't of Licensing, 137 Wn.2d 957,  
977 P.2d 554 (1999)..... 10

Kasper v. Edmonds, 69 Wn.2d 799,  
420 P.2d 346 (1966)..... 10

Lakemont Ridge Homeowners Ass'n v.  
Lakemont Ridge Ltd. P'ship, 156 Wn.2d 696,  
131 P.3d 905 (2006)..... 10

State v. Cannon, 130 Wn.2d 313,  
922 P.2d 1293 (1996)..... 13, 14

State v. Landrum, 66 Wn. App. 791,  
832 P.2d 1359 (1992)..... 11

State v. Stannard, 109 Wn.2d 29,  
742 P.2d 1244 (1987)..... 10

Statutes

Washington State:

Laws 2004, ch. 176, § 4 ..... 9

RCW 9.94A.030 ..... 8

RCW 9.94A.120 ..... 8

RCW 9.94A.670 ..... 1, 2, 3, 8, 9, 10, 11, 12

Rules and Regulations

Washington State:

CrR 3.5..... 13

Other Authorities

Sentencing Reform Act of 1981 ..... 8

A. ISSUE

1. In construing a statute, courts seek to effect the legislative intent. Thus, courts should not construe statutory language in a manner that results in absurd consequences. The legislature defined "victim" in the SSOSA<sup>1</sup> statute to include "any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged." The legislature subsequently limited SSOSA to defendants who "had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime." Landsiedel had no connection to his chosen victim, a fictional 13-year-old girl who was actually an undercover police officer. Nevertheless, Landsiedel's wife said that she was emotionally impacted as a result of her husband's crime. Does construing Landsiedel's wife as a "victim" of the crime, thus making him eligible for SSOSA, result in absurd consequences?

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<sup>1</sup> Special Sex Offender Sentencing Alternative (RCW 9.94A.670).

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Nicholas Landsiedel was charged by amended information with Attempted Rape of a Child in the Second Degree and Communication with a Minor for Immoral Purposes. The State alleged that, on December 28, 2007, Landsiedel arranged via an internet chat room to have sex with someone he believed was a 13-year-old girl; the "girl" was actually an undercover police officer. CP 1-5.

A jury found Landsiedel guilty as charged on both counts. CP 30-31. At sentencing, Landsiedel requested a Special Sex Offender Sentencing Alternative ("SSOSA"). CP 55; 5RP<sup>2</sup> 4. The State argued that Landsiedel was not eligible for a SSOSA because he did not have an "established relationship" with the victim. 5RP 5-6; RCW 9.94A.670(2)(e). Landsiedel responded that members of his family were "victims" within the meaning of the SSOSA statute, because they had suffered "emotional, psychological . . . or

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<sup>2</sup> The verbatim report of proceedings will be referred to in this brief as follows: 1RP (4-14-09); 2RP (5-11-09); 3RP (5-12-09); 4RP (5-13-09); and 5RP (7-2-09).

financial injury" as a result of his crime.<sup>3</sup> 5RP 6-7; CP 55; RCW 9.94A.670(1)(c). The court concluded that Landsiedel was not eligible for SSOSA, and imposed a sentence within the standard range. 5RP 10; CP 58, 60-61, 84-85.

## 2. SUBSTANTIVE FACTS.

In December of 2007, Seattle Police Detective Trent Bergmann's job was to investigate internet crimes against children. 2RP 28-29. At around 9:30 a.m. on December 28, 2007, Bergmann and another officer entered a Yahoo chat room where Bergmann used the profile of a fictitious 13-year-old girl named "Jenny Langston." 2RP 30-35.

An individual identified as "Nickland06" began a conversation with "Jenny," and continued even after being informed that she was only 13 years old. 2RP 36. The two exchanged photos. 2RP 40-41, 49-50. "Nickland06" asked "Jenny" if she wanted to "lose [her] virginity." 2RP 43. He asked, "How rough can

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<sup>3</sup> There was little evidence of emotional or psychological injury as a result of this crime. Landsiedel's wife testified at trial about her worry and panic when Landsiedel failed to show up for an appointment due to his arrest, and at sentencing she told the court that many people disagreed with her decision to stand by her husband after what he had done. 4RP 32-33; 5RP 9.

I get?" Id. When "Jenny" said that she didn't want to get hurt, but wanted "to do what you want," he responded: "Well, I don't think you could handle what I want, to be honest." 2RP 44. He said that he wanted to "[t]ie you up, toss you around, slap you hard, anal."

Id. When she asked if he would stop if it hurt too much, he responded: "Well, if it's just me putting myself in you, I will not stop. But other than that, I will." Id.

"Nickland06" asked for "Jenny's" address, because "the fake rape, it has to feel real." 2RP 46. "Jenny" would agree only to meet him at a McDonald's on Madison Street in Seattle, "cuz I got to see you first." 2RP 46-47. When "Jenny" asked "Nickland06" if he was on his way or just "messaging" with her, he said that it depended on her next answer. 2RP 47. He then asked: "If I go too far and your mom asks what happened, what are you gonna tell her?" Id. "Jenny" said that she would tell her mom that she fell while playing volleyball. Id.

"Nickland06" told "Jenny" that he wanted her to "hit and fight back." 2RP 49. He wrapped up the conversation by asking her if she had any rope or tape. Id.

After finishing the on-line conversation, Detective Bergmann enlisted Officer Megan Bruneau to pose as "Jenny" on the

telephone. 2RP 59-60, 92-93. Bruneau read the internet chat, and waited for a phone call from "Nick." 2RP 93-94.

The first call came at 11:15 a.m. 2RP 96. The caller confirmed that he was "Nick." Id. In answer to Nick's question, Bruneau assured him that she was "really" 13 years old. Id. Nick said that he was on his way to Seattle. 2RP 98. Bruneau asked Nick if he wanted her to scream really loudly, and he said that he did. Id. Nick explained that a woman had introduced him to rape simulation sex, and that he liked really submissive women. 2RP 98-99. Nick said that he would call when he got to the McDonald's. 2RP 99.

Officer Bruneau set out with Detective Bergmann and two other police officers in an unmarked vehicle for the meeting location at McDonald's. 2RP 100. While en route, Bruneau received a second phone call from Nick at 11:30 a.m., letting her know that he was stuck in traffic. 3RP 5-7. He asked her if she was a decoy for "Dateline" or a police officer; Bruneau said that she was not. 3RP 7. Nick also asked if she had ever been intimate with an older man, and Bruneau said that she had, with a man in his 20s. 3RP 8.

Bruneau received a third call from Nick at noon. 3RP 9. He told her that he was arriving in Seattle, and would be there shortly.

Id. He seemed to need reassurance, asking why she had so readily agreed to meet with him. Id.

Nick called a fourth time at 12:30 p.m., announcing that he had arrived at the McDonald's. 3RP 10-11. The police drove their unmarked car into the McDonald's parking lot. 2RP 62; 3RP 11-12. Officer Bruneau kept Nick on the line. 3RP 12. Bruneau and Bergmann recognized a man sitting in a gray sedan and talking on the phone as the one from the internet photo exchange. 2RP 62; 3RP 13. When he hung up the phone, Bruneau's line disconnected. 3RP 13-14.

Bergmann approached the man's car and identified himself as a police officer. 2RP 62-63. Nicholas Landsiedel began to cry, and begged police not to take him to jail.<sup>4</sup> 2RP 63. After being apprised of his rights, Landsiedel admitted that he had been on his way to meet a 13-year-old girl, and planned to tie her up and simulate a rape scene. 2RP 72; 4RP 18. He said that he had been introduced to rape-fantasy sex by a previous girlfriend, and had come to prefer it. 2RP 75. He told police that this was the first time that he had picked up a juvenile on the internet. 2RP 75-76.

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<sup>4</sup> Both Bergmann and Bruneau identified Landsiedel in court as the man they had apprehended in the McDonald's parking lot. 2RP 63-64; 3RP 14.

Landsiedel also gave police a written statement. 2RP 76-77.

Detective Bergmann read the statement in court:

Today the police arrested me in the parking lot of the McDonalds. Earlier in the day, I was chatting on Yahoo and met a 13 year old girl named Jenny. I was using my Yahoo screen name of Nickland06. I wanted to have sex with Jenny and do a rape scene. I feel really bad about this and I will never do this again. I know it is illegal and I have never done this before.

2RP 78.

The police searched Landsiedel's car. 2RP 64; 3RP 29, 40.

They found a camera, rope, and condoms. 2RP 65-66; 3RP 14, 29, 40-41.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY CONCLUDED THAT LANDSIEDEL WAS NOT ELIGIBLE FOR A SSOSA.

Landsiedel contends that the trial court erred in concluding that he was not eligible for a SSOSA. His reliance on the statutory definition of "victim" to include his own wife is unavailing, in light of the legislature's subsequent limitations on eligibility for SSOSA. Because Landsiedel's interpretation of the SSOSA statute would contravene legislative intent and would lead to absurd results, the

trial court properly rejected his interpretation and concluded that he was not eligible for a SSOSA.

The Special Sex Offender Sentencing Alternative ("SSOSA") has existed as a separate statute, RCW 9.94A.670, since 2001.<sup>5</sup> Appendix A. Since that time, it has contained the same definition of "victim": "'Victim' means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. 'Victim' also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense." RCW 9.94A.670(1)(c); Appendix A. The first sentence of this definition is taken directly from the definition of "victim" that applies generally to the SRA.<sup>6</sup> RCW 9.94A.030(52).

The 2001 version of the SSOSA statute contained several limitations on eligibility: the current conviction must not have been for rape in the second degree or a sex offense that is also a serious violent offense; the offender could not have a prior conviction for a felony sex offense; and the current offense must be punishable by

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<sup>5</sup> Prior to 2001, the terms of an alternative sentence for sex offenders were contained within RCW 9.94A.120, the general sentencing statute. Appendix B.

<sup>6</sup> Sentencing Reform Act of 1981.

confinement for less than eleven years. Former RCW 9.94A.670(2)(a), (b), (c) (eff. July 1, 2001); Appendix A. These three limitations on eligibility continue to exist in the current version of the SSOSA statute. RCW 9.94A.670(2)(a), (b), (f).

In 2004, the legislature placed additional limitations on eligibility for a SSOSA. Laws 2004, ch. 176, § 4.<sup>7</sup> The 2004 limitations included: if the offender pled guilty, he or she must have affirmatively admitted all of the elements of the crime (RCW 9.94A.670(2)(a)); the offender must have no prior adult convictions for a violent offense within five years of the date of the current offense (RCW 9.94A.670(2)(c)); the offense must not have resulted in substantial bodily harm to the victim (RCW 9.94A.670(2)(d)); and the offender must have had "*an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime*" (RCW 9.94A.670(2)(e)) (italics added).

The question here is whether *anyone* with whom the defendant has an established relationship and who has suffered as a result of the crime, including the defendant's own wife, can serve

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<sup>7</sup> See Historical and Statutory Notes following current version of RCW 9.94A.670.

as the required connection between victim and defendant, thus making the defendant eligible for SSOSA in spite of the limitation contained in RCW 9.94A.670(2)(e). This question must be answered by resort to the rules of statutory interpretation.

Statutory interpretation is a question of law, which courts review *de novo*. Lakemont Ridge Homeowners Ass'n v. Lakemont Ridge Ltd. P'ship, 156 Wn.2d 696, 698, 131 P.3d 905 (2006). The court's primary duty in interpreting the statute is to "discern and implement the intent of the legislature." Id.

All statutory language must be given effect, with no part of the statute rendered meaningless or superfluous. Id. at 699. Courts will not ascribe to the legislature a vain act. Kasper v. Edmonds, 69 Wn.2d 799, 804, 420 P.2d 346 (1966). The meaning of a particular word in a statute is not gleaned from that word alone; the purpose is to ascertain the legislative intent of the statute as a whole. Davis v. Dep't of Licensing, 137 Wn.2d 957, 970-71, 977 P.2d 554 (1999).

There is one rule of statutory construction that "trumps every other rule": the court is not to construe the statutory language in a way that results in absurd or strained consequences. Id. at 971. See State v. Stannard, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)

("Statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided.").

Interpreting the SSOSA statute to allow eligibility where *anyone* with whom the defendant has a prior relationship has suffered emotional or psychological injury as a result of the crime, leads to an absurd result. Any defendant who has a spouse, or even a close friend, who was upset over the defendant's actions in committing the crime would be eligible for this privilege.

This cannot be what the legislature intended. The 2004 amendments *further restricted* eligibility for SSOSA.<sup>8</sup> The general definition of "victim" made sense in terms of the concurrent provision allowing the court to order the defendant to "[r]eimburse the victim for the cost of any counseling required as a result of the offender's crime." Former RCW 9.94A.670(5)(h) (effective July 1, 2001); Appendix A. One can easily imagine that persons other than the actual victim of the crime (e.g., siblings of a child victim, spouse of an adult victim) might require counseling.

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<sup>8</sup> When two statutory provisions dealing with the same subject matter are in conflict, the *latest enacted* provision prevails when it is the more specific. State v. Landrum, 66 Wn. App. 791, 796-97, 832 P.2d 1359 (1992).

But the later-enacted provision is obviously intended to narrow the availability of SSOSA -- it limits eligibility to those defendants who have a pre-existing relationship with the victim of the crime. And it was enacted as one of a group of new limitations on eligibility for SSOSA. To read the provision as Landsiedel wishes to read it would place *no limitation at all* on SSOSA eligibility by virtue of this provision. Landsiedel's interpretation renders the limitation meaningless and superfluous, it ascribes to the legislature a vain act in enacting the limitation, and it leads to absurd results (i.e., a limitation on eligibility that imposes no limit at all). All of this is explicitly forbidden by the rules of statutory interpretation.

The intent of the legislature in enacting RCW 9.94A.670(2)(e) is clear -- the legislature intended to preserve the SSOSA option for those situations where the offender is a family member or friend of the victim, probably to encourage such victims to report these crimes in the first place. Adopting Landsiedel's interpretation would write the limitation in subsection (2)(e) out of the SSOSA statute. This Court should reject such an absurd result.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW HAVE NOW BEEN FILED, AND THERE IS NO SHOWING THAT LANDSIEDEL HAS BEEN PREJUDICED.

Landsiedel also faults the trial court's failure to enter findings of fact and conclusions of law concerning the admissibility at trial of his statements to police. These findings have now been entered, and there is no showing of any prejudice to Landsiedel.

The trial court held a hearing pursuant to CrR 3.5 to determine the admissibility of Landsiedel's statements to police. 1RP 7-29. The court found all of his statements admissible. 1RP 29-33.

The prosecutor prepared findings in 2009, but the findings were somehow never presented to the trial court. Supp. CP \_\_\_\_ (sub #98, Declaration of Deputy Prosecuting Attorney); Appendix D. Upon presentation, the trial court signed the findings. Supp. CP \_\_\_\_ (sub #96, Written Findings of Fact and Conclusions of Law on CrR 3.5 Motion to Admit the Defendant's Statements); Appendix C.

The appellate court will not reverse a conviction for late entry of findings and conclusions unless the delay prejudiced the defendant or the findings and conclusions were tailored to address the issues raised in the defendant's trial brief. State v. Cannon, 130

Wn.2d 313, 329-30, 922 P.2d 1293 (1996). The written findings and conclusions, which were prepared long before Landsiedel filed his appellate brief, track the trial court's oral ruling. Moreover, the appeal raises no issue with respect to the admissibility of Landsiedel's statements; thus, "tailoring" is not an issue. Finally, the written findings, which were filed on March 10, 2011, did not delay this appeal.

D. CONCLUSION

For all of the foregoing reasons, this Court should find that Landsiedel was not eligible for a SSOSA, and affirm his convictions and sentence.

DATED this 7<sup>th</sup> day of May, 2011.

Respectfully submitted,

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# **APPENDIX A**

confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

The court shall also impose:

(a) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(b) Crime-related prohibitions including a condition not to use illegal controlled substances; and

(c) A requirement to submit to urinalysis or other testing to monitor that status.

The court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing court;

(vii) Such other conditions as the court may require such as affirmative conditions.

(3) If the offender violates any of the sentence conditions in subsection (2) of this section, a violation hearing shall be held by the department unless waived by the offender. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

(4) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(5) An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time. An offender who violates any conditions of supervision as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing court. If an offender is

reclassified to serve the unexpired term of his or her sentence, the offender shall be subject to all rules relating to earned release time.

[2000 c 28 § 19.]

#### 9.94A.670. Special sex offender sentencing alternative (*Effective July 1, 2001*)

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence within the standard sentence range. If the sentence imposed is less than [than] eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall place the offender on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(b) The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

(b) Crime-related prohibitions;

(c) Require the offender to devote time to a specific employment or occupation;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer;

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community service work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(7) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of

termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.

(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. [2000 c 28 § 20.]

#### 9.94A.700. Community placement (*Effective July 1, 2001*)

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.125 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

COMM CUST

## **APPENDIX B**

the consultation shall be based on the recommendation of the certified provider.

(b) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

[2000 c 226 § 2; 2000 c 43 § 1. Prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12.]

### Historical and Statutory Notes

**Reviser's note:** \*(1) RCW 9.94A.030 was amended by 2000 c 28 § 2 which dropped the modifier "court-ordered" from the remaining definition of "legal financial obligations."

\*\* (2) RCW 9.94A.140(1) and 9.94A.142(1) were further divided by 2000 c 28 §§ 32 and 33, respectively.

(3) This section was amended by 2000 c 43 § 1 and by 2000 c 226 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(4) See also the amendment by 2000 c 28 § 5, effective July 1, 2001.

**Finding—Intent—2000 c 226:** "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and

strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1]

**Severability—2000 c 226:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 226 § 6]

### 9.94A.120. Sentences (Effective July 1, 2001)

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence

as provided in the following sections and as applicable in the case:

- (i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;
- (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;
- (iii) RCW 9.94A.710 and 9.94A.717, relating to community custody;
- (iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;
- (v) RCW 9.94A.560, relating to persistent offenders;
- (vi) RCW 9.94A.590, relating to mandatory minimum terms;

- (vii) RCW 9.94A.650, relating to the first-time offender waiver;
- (viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;
- (ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;
- (x) RCW 9.94A.390, relating to exceptional sentences;
- (xi) RCW 9.94A.400, relating to consecutive and concurrent sentences.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community service work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.390.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145.

(5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.140 and 9.94A.142.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or

## **APPENDIX C**

FILED  
KING COUNTY

MAR 10 2011

SUPERIOR COURT CLERK  
BY JANIE SMOTER  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 08-1-00638-3 SEA

vs.

NICHOLAS LANDSEIDEL,

Defendant.

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5  
MOTION TO ADMIT THE  
DEFENDANT'S STATEMENTS

A hearing on the admissibility of the defendant's statements was held on April 14, 2009, before the Honorable Judge Laura Inveen. The court informed the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial, and (4) if he does testify at the hearing and at trial, he may be cross-examined at trial about his testimony at the hearing. After being so advised, the defendant did not testify at the hearing. Seattle Police Detectives Trent Bergmann testified at the motion.

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENTS - 1

Daniel T. Satterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955



1 After considering the evidence submitted by the parties and hearing argument, the court  
2 enters the following findings of fact and conclusions of law as required by CrR 3.5.:

3  
4 1. FINDINGS OF FACT

5 In December of 2007, the Seattle Police Department's Internet Crimes Against Children's  
6 Task Force was conducting an undercover investigation through the internet. On December 28,  
7 2007, Detectives Trent Bergmann and Garry Jackson from the task force, entered a "chat room" on  
8 an internet site known as Yahoo. They posed as a female child that was 13 years of age. At  
9 approximately 9:44 a.m., the defendant contacted them by instant message and they began chatting.  
10 The defendant told them he was 24 years of age and they told him they were a 13-year-old girl. The  
11 defendant continued to chat with them and asked to have sex with the female child. The defendant  
12 then said he wanted the child to pretend that she was being raped, wanted to hit her, tie her up, and  
13 force sex upon her as well as anal sex. The defendant sent a picture of himself and they agreed to  
14 meet him at a McDonald's restaurant located at 1122 Madison Street. They gave the defendant the  
15 phone number to their undercover phone. Officer Megan Bruneau answered the phone pretending  
16 to be the juvenile female. At 12:30 p.m., the defendant called and said he was in the parking lot to  
17 the McDonald's waiting for her.

18 Seattle Police entered the parking lot and found the defendant in his car talking on his cell  
19 phone. They noted that he matched the picture he sent them over the internet. As the vehicle that  
20 the officers were travelling in came to a stop, the defendant closed the cell phone he was holding  
21 and the connection on Officer Bruneau's phone ended.

22 Detective Bergmann contacted the defendant, who immediately began crying and said,  
23 "Please don't take me to jail." The defendant was placed under arrest and his car was searched

24 WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENTS - 2

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1 incident to his arrest. Detective Bergmann recovered two unused condoms. Detective Williams  
2 recovered rope from the front passenger seat, a digital camera, and a cell phone.

3           Once under arrest, Detective Trent Bergmann read the defendant his rights, and the  
4 defendant agreed to give a statement. The defendant said the screen names he used were  
5 nland06@gmail.com, singleineverett@yahoo.com, nickland24@yahoo.com, and  
6 nickland06@yahoo.com. The defendant admitted that he had been communicating in an on-line  
7 chat room with a 13-year-old girl earlier in the day. He also admitted that he drove to the  
8 McDonald's parking lot to meet her and to have sex with her while she pretended to be raped. He  
9 said that he was going to use the condoms that were in the glove box and had been addicted to 'rape  
10 sex' because his last girlfriend had been into it. He said this was the first time he was going to have  
11 sex with someone who was under the age of eighteen.

12  
13 **2. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE DEFENDANT'S**  
14 **STATEMENTS:**

15  
16 The defendant was not in custody while he was chatting with undercover Detectives Bergmann,  
17 Williams, and Officer Megan Bruneau. The defendant told them he was 24 years of age. He  
18 continued to chat with them and asked to have sex with the female child. The defendant then said  
19 he wanted the child to pretend that she was being raped, wanted to hit her, tie her up, and force sex  
20 upon her as well as anal sex. The defendant sent a picture of himself and they agreed to meet at a  
21 McDonald's restaurant located at 1122 Madison Street. At 12:30 p.m., the defendant called and said  
22 he was in the parking lot to the McDonald's waiting for her.

23           Similarly, when Detective Bergmann contacted the defendant in his vehicle in the  
24 McDonald's parking lot, the officers were still engaged in their investigation. Accordingly,

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENTS - 3

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W554 King County Courthouse  
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(206) 296-9000, FAX (206) 296-0955

1 Miranda was inapplicable because the defendant was not under formal arrest, his movements had  
2 not been restricted to a degree associated with formal arrest (i.e. handcuffs, placed in a patrol  
3 car), no guns had been drawn.

4         Additionally, the defendant was not interrogated by Detective Bergmann. Here, as soon  
5 as the defendant was contacted by Officer Bergmann in the McDonald's parking lot he began  
6 crying and said, "Please don't take me to jail." This statement was made spontaneously, not  
7 solicited, and not the product of custodial interrogation. This statement is admissible against the  
8 defendant at trial.

9         Once the defendant was placed under arrest, he was fully advised of his Miranda  
10 warnings. He was fully advised of each and every right with no threats or promises being made.  
11 He acknowledged these rights orally and told the detective that he understood his rights, waived  
12 them, and agreed to talk with him.

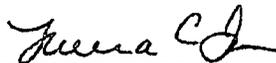
13         After providing the detective with his initial oral statement, Detective Bergmann prepared  
14 a written statement for the defendant. Detective Bergmann read the statement to the defendant  
15 including the explanation of constitutional rights and waiver of constitutional rights and then  
16 handed the statement to the defendant. In his written statement, the defendant said the screen  
17 names he used were nland06@gmail.com, singleineverett@yahoo.com, nickland24@yahoo.com,  
18 and nickland06@yahoo.com. The defendant admitted that he had been communicating in an on-  
19 line chat room with a 13-year-old girl earlier in the day. He also admitted that he drove to the  
20 McDonald's parking lot to meet her and to have sex with her while she pretended to be raped. He  
21 said that he was going to use the condoms that were in the glove box and had been addicted to 'rape  
22 sex' because his last girlfriend had been into it. He said this was the first time he was going to have  
23

1 sex with someone who was under the age of eighteen. The defendant then read and signed the  
2 statement.

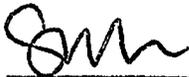
3 The defendant was fully advised of Miranda warnings twice by Detective Bergmann. He  
4 waived them. No threats or coercion were used. Both statements were voluntarily given.  
5 Therefore, these statements are admissible for all purposes.

6 In addition to the above written findings and conclusions, the court incorporates by  
7 reference its oral findings and conclusions, the evidence presented, and the oral and written  
8 arguments of the parties.

9  
10  
11  
12 Signed this 10 day of March, 2009.

13  
14   
15 THE HONORABLE LAURA INVEEN

16 Presented by:

17 

18 Shelby R. Smith, WSBA #31377  
19 Deputy Prosecuting Attorney

20 not present

21 Ronald Gomes, WSBA #31174  
22 Attorney for the Defendant  
23  
24

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENTS - 5

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## **APPENDIX D**

FILED

11 MAR 31 PM 2:26

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 08-1-00638-3 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

NICHOLAS LANDSEIDEL

Defendant.

No. 08-1-00638-3 SEA

DECLARATION OF DEPUTY  
PROSECUTING ATTORNEY

I, the undersigned, hereby declare that I am 18 years of age, I am competent to testify in a court of law, and I am familiar with the facts contained herein:

1. I am a Deputy Prosecuting Attorney with the King County Prosecutor's Office.
2. I was the trial attorney in the above captioned case.
3. I was contacted by my office's appellate unit on February 1, 2011 and informed that findings of fact and conclusions of law, pursuant to CrR 3.5 could not be located in the electronic court record or the original prosecutor's file. I verified that the documents were not included in the electronic court file.

DECLARATION OF DEPUTY PROSECUTING  
ATTORNEY - 1

Daniel T. Satterberg, Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

1 4. I searched my electronic files and located findings that were prepared by me in 2009 after the  
2 CrR 3.5 hearing, but were not presented to the court.

3 5. On February 1, 2011, I contacted the defendant's trial attorney by email and informed him that  
4 I had been notified by out appellate unit that written CrR 3.5 findings were never entered. I  
5 attached a copy of my proposed findings and asked him to review them and sign them if he  
6 agreed with the findings. I notified defense counsel that I would request a hearing to enter  
7 findings in before the judge that heard the CrR 3.5 motion, the Honorable Judge Laura Inveen,  
8 if I did not hear back from him by the end of the week. We did not discuss the appeal.

9 6. I did not hear back from defense counsel, and contacted the Honorable Judge Laura Inveen's  
10 bailiff on February 7, 2011 in order to request a hearing.

11 7. The hearing was initially scheduled for February 22, 2011 at 2:30 pm. Because Mr. Gomes  
12 was in Portland, Oregon on that date, arrangements were made for him to appear  
13 telephonically. However, Mr. Gomes did not answer the telephone when the court attempted to  
14 reach him, and the hearing was rescheduled for Wednesday, March 2, 2011 at 2:30.

15 8. I notified Mr. Gomes of the new date and time by email, however he did not appear, and did  
16 not answer his telephone when the court attempted to reach him that way. The hearing was  
17 rescheduled for March 10, 2011 at 9:00 am.

18 9. This time, I sent notice to Mr. Gomes by email and mailed written notice to Mr. Gomes. I also  
19 sent notice to the appellate attorney, Chris Gibson.

20 10. Mr. Gomes did not appear at the hearing on March 10, 2011.

21 11. I presented these findings and conclusions to the trial judge, the Honorable Laura Inveen.  
22 The findings were signed by the court and entered.  
23

DECLARATION OF DEPUTY PROSECUTING  
ATTORNEY - 2

**Daniel T. Satterberg, Prosecuting Attorney**  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

1 6. I have not reviewed the appellate file or any documents related thereto in the above captioned  
2 case. I have not spoken with anyone regarding the appellate issues being raised in the above  
3 captioned case. I have no knowledge of any appellate issue being raised in this matter.  
4

5 Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is  
6 true and correct. Signed and dated by me this 10<sup>th</sup> day of March, 2011, at Seattle, Washington.  
7

8   
9 \_\_\_\_\_  
10 Shelby R. Smith, WSBA # 31377  
11 Deputy Prosecuting Attorney  
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DECLARATION OF DEPUTY PROSECUTING  
ATTORNEY - 3

Daniel T. Satterberg, Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Christopher H. Gibson**, the attorney for the appellant, at **Nielsen, Broman & Koch, PLLC**, 1908 East Madison, Seattle, WA 98122, containing a copy of the **Brief of Respondent** in **STATE v. NICHOLAS LANDSIEDEL**, Cause No. **64058-5-I**, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name  
Done in Seattle, Washington

05/09/11  
Date

2011 MAY -9 PM 4:31