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65098-0

KHN

No. 65098-0-1

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

CALVIN ARTIE EAGLE, Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

BRIEF OF RESPONDENT

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INTRODUCTION

A Whatcom County jury found defendant Calvin Eagle guilty of one count of first degree child rape and two counts of second degree child rape. Defendant Eagle appeals, alleging violation of his right to a public trial, ineffective assistance of counsel, and violation of his right to a unanimous verdict.

The State respectfully requests the Court to affirm the jury's verdict for three reasons. First, the trial court did not violate defendant's public trial right by working on jury instructions with counsel in chambers. Defendant presents a variation on the Bone-Club argument: by discussing jury instructions in chambers, the trial court allegedly closed the courtroom. A recent decision from Division III succinctly rejects this argument.

The in-chambers conference was a ministerial legal matter. It did not involve disputed facts. And ultimately it did not then implicate Mr. Koss's right to a public trial. Nor was it a critical stage that required Mr. Koss's presence.

State v. Koss __ Wn. App. __, 241 P.3d 415, 2010 WL 4015216, 3 (2010) (publication ordered October 12, 2010).

Second, defendant had highly competent counsel at trial, and his failure to object to snippets of testimony was not ineffective assistance requiring a retrial. Third, the State's failure to request a

Petrich instruction was harmless error. The State presented evidence that defendant repeatedly molested one of his two underage victims over specific periods of time. Defendant's answer was unvarying – he denied ever molesting the two girls. Where a reasonable juror could find each incident of rape proven beyond a reasonable doubt, the failure to give a unanimity instruction is harmless error. State v. Camarillo, 115 Wn.2d 60, 64, 794 P.2d 850 (1990).

The State requests the Court to affirm defendant's conviction and dismiss this appeal.

I. RESTATEMENT OF ISSUES PRESENTED

Defendant's appeal presents three issues:

A. "A defendant does not...have a right to a public hearing on purely ministerial or legal issues that do not require the resolution of disputed facts." State v. Sadler, 147 Wn. App. 97, 114, 193 P.3d 1108 (2008). Here, the trial court met with counsel in chambers to discuss the parties' proposed jury instructions, but returned to open court to present the court's instructions and take objections. (12/09/09 VRP 947). Did the trial court violate Bone-Club by discussing the legal issues of jury instructions in chambers?

B. “To prove that failure to object rendered counsel ineffective, Petitioner must show that not objecting fell below prevailing professional norms, that the proposed objection would likely have been sustained, and that the result of the trial would have been different if the evidence had not been admitted.” In re Davis, 152 Wn.2d 647, 714, 101 P.3d 1 (2004) (footnotes omitted). Defense counsel chose not to object to snippets of testimony about defendant Eagle’s behavior with two other girls in the household. Was this decision so incorrect and prejudicial that it deprived defendant of his right to counsel?

C. The failure to request a unanimity instruction is prejudicial unless “no rational juror could have a reasonable doubt as to any of the incidents alleged.” State v. Camarillo, 115 Wn.2d 60, 64, 794 P.2d 850 (1990). In response to his victim’s testimony that he raped her multiple times over the course of four years, defendant argued only that she made this all up. After finding the defense unbelievable, could a rational juror have a reasonable doubt about any of the attacks?

II. STATEMENT OF FACTS

A. Defendant Eagle's Sexual Abuse of Shilair

Defendant's opening brief notes superficially one victim's, Shilair's, testimony about his repeated abuse. She describes the abuse with as much detail as could be expected from a traumatized teenager. Rather than providing specific dates, Shilair remembered four specific periods or events that marked the ongoing molestation. These corresponded with her four grades in school – fifth through eighth grade. Because her birthday is October 14, 1993, Shilair would turn a year older at the beginning of each school year. (12/01/09 VRP 47). The incidents in fifth and sixth grade constituted first degree rape (ages 10-12), and the incidents in seventh and eighth grade were second degree rape (ages 13-14).

1. Fifth Grade -- Abuse Begins At The C Street House in Blaine.

The abuse started when Shilair, her mother, and her brothers moved into defendant Eagle's house on C Street in Blaine. Shilair was entering fifth grade and about to turn 11. (12/01/09 VRP 60). The first incident occurred shortly after she moved in.

Q. During that time, when you moved in, did the defendant touch you?

A. Inappropriately?

Q. Yes.

A. Yes, he did.

Q. Could you tell us about that?

A. Um, like a place or where it was?

Q. Yes, where it was.

A. I don't know. Like in my bedroom or his bedroom, and it would be like my bottom or my vaginal area. Stuff like that.

(12/01/09 VRP 62) (12/01/09 VRP 181) ("I just remember summer time and right before the fifth grade").

Not surprisingly, as an 11-year old, Shilair could not pinpoint the dates of the abuse. Instead, she remembered the abuse as ongoing when defendant Eagle and she were alone in the house.

Q. Did this happen more than once?

A. I would be in my bedroom or his room or like where anyone else wasn't.

Q. Did this happen more than once?

A. It happened quite a few times.

Q. Would it happen when people were in the house or out of the house?

A. Um, either one. Like if no one was around then it would happen.

(12/01/09 VRP 64-65). The abuse continued until June 13, 2008, when Shilair disclosed the abuse to her mother and the Blaine Police. (12/03/09 VRP 399-400).

2. Sixth Grade -- Defendant Gives Her Shoes For Sex

When Shilair was 12, in sixth grade, defendant Eagle gave her shoes in exchange for oral sex. This was the second incident.

Q. Did the defendant ever talk to you about buying you shoes with regard to oral sex?

A. Yes.

Q. What was that all about?

A. Um, this time actually I was in sixth grade. He would have me give oral sex on him and then afterwards he went and bought me some shoes.

* * * *

Q. He told you he would buy you shoes?

A. Afterwards.

Q. Did he buy you shoes?

A. He did.

Q. What kind of shoes, do you recall?

A. Yeah. They were orange and white Phat Farms.

(12/01/09 VRP 123). The abuse continued through sixth grade. Shilair remembered it, and testified to it, based on this incident regarding her new shoes.

3. Seventh Grade – Limo Night

The third incident occurred after Shilair received bunk beds for her 13th birthday. She was in the seventh grade. Every year in December Sheila Rowe, Shilair's Mother, would rent a limousine for the evening and go out with friends, leaving the kids at home. (12/01/09 VRP 109). On the Limo Night in seventh grade, Shilair was alone with defendant Eagle. (12/01/09 VRP 109). She fell asleep downstairs and awoke to find defendant attempting intercourse.

Q. You mentioned you fell asleep. What happened? What do you remember next?

A. I remember he was on me and he's trying to like go all the way with me.

* * * *

Q. You mentioned your pants were down, his pants were down; what do you recall happening?

A. I remember he tried putting his penis in my vaginal area and I told him not to and he was just telling me he was making it easier for the first time with other guys.

Q. You told him not to and he's telling you it's okay, I'm assuming; is that right?

A. Yeah. He says he is just trying to help me out in the future.

(12/01/09 VRP 111-112).

Shilair ran upstairs and locked herself in the bathroom.

(12/01/09 VRP 112). After waiting to see if Eagle followed her, she crawled out of the bathroom, into her bedroom, and up to the top bunk. She built a wall of pillows to keep Eagle out.

Q. You tried to block the ladder?

A. Yeah, block the ladder with my pillows that night.

Q. What happened after that?

A. He still came up. Like he moved the pillows and came up and laid with me.

* * * *

Q. What happened?

A. I can't recall. I just remember he was still trying to do stuff with me, trying to cuddle and kiss and stuff. And he told me he was not going to do it anymore or if he did it wasn't going to hurt very much. He was trying to talk to me about what happened downstairs.

* * * *

Q. Did anything else happen while you were in your bed?

A. He just touched my like vaginal area just with his hands and stuff.

Q. Did he put his fingers inside your vagina?

A. Yes.

Q. How did that end?

A. I told him to stop and get out of my room and he left after I yelled at him.

(12/01/09 VRP 114-115).

The rape on Limo Night marked the abuse that continued through seventh grade. (12/01/09 VRP 122, 142).

4. Eighth Grade – The Abuse Continues Until Shilair Fights With Eagle

Defendant Eagle continued to molest Shilair when she was 14 and in eighth grade. She testified that Eagle began using a vibrator on her.

A. Um, it was kind of like a circle thing, kind of like an oval type thing.

Q. How would he touch you with that?

A. He would just take it and hold it down there for a while and he just wanted me to be quiet.

Q. When did he start using that?

A. Um, I think I was in eighth grade.

(12/01/VRP 122).

Defendant also performed oral sex on her.

Q. Did he ever perform oral sex on you?

A. Yes, he did.

Q. When did that take place?

A. I was either in seventh or eighth grade.

Q. Where did that take place?

A. It was either in my bedroom at night or downstairs on the couch. Or in his room.

Q. How often did that take place?

A. Um, few times a week.

(12/01/09 VRP 122).

The abuse ended in June 2008. It began with a fight over a tube top.

A. I was home after school and he got home from work and then I asked him why I didn't have my tube tops and he said he was being a fatherly figure to me by taking them and that's when I freaked out and told him that a father doesn't do the kinds of things he does to me like touching me inappropriate or kissing me with his tongue and stuff.

Q. How did he respond to that?

A. He just started yelling at me and got all mad and started screaming at me. And then I can't remember what I said except I told him that, I said you're not just doing it to me, I know about my cousin [Brienne], too. You're touching her and doing stuff to her, too.

Q. How did he respond to that?

A. He left and then came back and –

Q. He left and came back; what happened?

A. He came back. He says oh, by the way, I didn't touch your cousin. I only do that stuff to you, not her.

(12/01/09 VRP 127-28).

Shilair called her friend Amber, who convinced her father to pick Shilair up. (12/01/09 VRP 212). At Amber's, Shilair revealed the abuse. Amber and her mother kept Shilair that night and drove her to her mother's office in the morning. (12/01/09 VRP 215). Shilair revealed the abuse to her mother, and later that day, they reported the abuse to Detective Debra Hertz at the Blaine Police Department. (12/7/09 VRP 570) (Sheila Rowe) (12/3/09 VRP 400) (Detective Hertz).

Once Shilair's mother, Sheila Rowe, learned about the abuse, she demanded that defendant Eagle move out of the house. (12/7/09 VRP 575). Ms. Rowe loaded all his possessions in his car, and neither Rowe nor Shilair have had contact with the defendant since then. (12/7/09 VRP 576).

B. Defendant Eagle Offered Only A General Defense:
Shilair Fabricated The Abuse

Defendant testified at trial and offered general, unqualified denials of ever touching Shilair's vagina or engaging in any sexual abuse. (12/08/09 VRP 708, 725, 728, 732, 736, 744, 756-57, 781-82, 788, 800). For example, in response to the allegation that he had put his fingers in Shilair's vagina, defendant Eagle stated "that's the most disgusting thing that anybody has ever said about me." (12/08/09 VRP 744). He also claimed that he did not see Shilair on Limo Night.

Q. Did you at some point touch Shilair in an inappropriate way during limo night?

A. Like I said, I never, I never seen Shilair the whole time.

Q. Did she become angry at you and go into a bathroom and hide from you?

A. No.

Q. Did you force her to go into a bathroom because of something you did?

A. No. I had never seen her.

Q. Did you force her to crawl down the hallway and be fearful of you?

A. No. She's not scared of me first of all.

(12/8/09 VRP 799-800). During an evidentiary argument without the jury present, the trial court acknowledged defendant is “giving a general denial that none of that [abuse] happened.” (12/8/09 VRP 837).

There was no variation from Eagle’s defense – he never abused Shilair or Brianne and the girls had fabricated their testimony. Defendant did admit he bought Shilair a pair of Phat Farm shoes.

I remember when I was young and I used to get made fun of for not having the shoes that everybody else did and I didn’t want her to feel, I didn’t want her to feel the same way I did when I was a kid.

(12/8/09 VRP 762).

To explain why Shilair would make up these allegations, defendant Eagle suggested it came from her watching a Lifetime television show about sexual abuse.

A. She was watching a pretty serious episode maybe on Lifetime, I’m not sure what it was, but it kind of caught me off guard when I started getting adjusted to the story.

Q. What was the show about?

A. It was about a stepfather that was molesting his stepdaughter.

* * * *

Q. Did you ever discuss that TV show after that time?

A. No.

Q. Did you ever think about it ever again?

A. Not until all this happened.

Q. Why did you think about it when this happened?

A. Because she had an interest in that story.

(12/8/09 VRP 803).

According to Eagle, Shilair's story about abuse arose because he had hidden her tube tops and forbade her from wearing them. (12/8/09 VRP 804-811). This was the big fight that preceded Shilair going to Amber's house and disclosing the abuse.

Q. What was said?

A. She said that I was an asshole and who was I to tell her what to do. I wasn't her father. And if I didn't start letting her do what she wanted or wear what she wants she was going to make a false accusation of touching inappropriate.

Q. Were those the words she used?

A. Very much.

Q. She said touching inappropriate?

A. That's what she said.

Q. Did she say anything else?

A. That's it.

Q. What did you say about that?

A. Flabbergasted. I was stunned. Shocked. I couldn't believe what she said. Just overwhelmed, really.

Q. What did you do after she said that?

A. Um, I just, you know, I told her if she really realized what she was saying, you know, was it really that important to her to have these tube tops to say something to that extent, you know. That it would cause trouble. Yeah, it would. She could make a false accusation like that and that could be it.

(12/8/09 VRP 809).

C. The Jury Convicted Defendant Eagle On Three of Four Counts

The State charged Eagle with four counts of child rape. (Second Amended Information; Sub No. 70; CP __)(Appendix A)* Count I was for first degree child rape of Brianne; Count II was for first degree child rape of Shilair; Count III was second degree child rape of Brianne; and Count IV was second degree child rape of Shilair. (Sub No. 70; CP __). The difference between first and second degree child rape was the age of the victim. Abuse

* The State has designated the Information in a supplemental designation of clerk's papers. A CP citation does not yet exist.

occurring before age 13 was first degree; abuse after age 13 was second.

The Jury convicted Eagle of Counts II-IV and acquitted on Count I. (Verdict; CP 33-34) (Appendix B). In his closing argument, the Prosecutor elected to try defendant Eagle only on one incident involving Brianne after she was 13.

Brianne, the evidence in this case that you have received is that it only happened once. We are not going to argue that it happened more than one time. Brianne said it felt like it happened more times but she could not give you testimony to support that.

(12/9/09 VRP 956-57). The jury according acquitted on the Count I.

The Prosecutor also underscored specific, multiple acts of child rape involving Shilair.

The allegations in this case are pretty clear. The allegation is that defendant inserted his fingers in both girls' vaginas. You heard about that quite a bit. That he performed oral sex on Shilair. Shilair testified that he had done that many times. The defendant had Shilair perform oral sex on him and because of that she received shoes....

Of course the defendant attempted to put his penis in Shilair's vagina twice, that's what the testimony is. And that the defendant used a sexual device in Shilair's vagina as well. That's the testimony. Those are the allegations. Those allegations are what this case is made of.

(12/9/09 VRP 954-55). After uneventful deliberations, the jury returned a guilty verdict on both Counts involving Shilair.

Defendant now appeals.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews defendant's Bone-Club argument *de novo*. "Whether a defendant's right to a public trial has been violated is a question of law, subject to *de novo* review on direct appeal." State v. Brightman, 155 Wn.2d 506, 514, 122 P.3d 150, (2005). The Court reviews defendant's allegations of ineffective assistance of counsel *de novo*. State v. Cross, 156 Wn.2d 580, 605, 132 P.3d 80 (2006) ("We review this question *de novo*").

Finally, the Court reviews defendant's unanimity argument *de novo*. See State v. Furseth 156 Wn. App. 516, 520, 233 P.3d 902 (2010).

IV. THE IN-CHAMBERS DISCUSSION OF JURY INSTRUCTIONS DID NOT VIOLATE DEFENDANT'S RIGHT TO A PUBLIC TRIAL

Defendant alleges that the trial court's conference with counsel in chambers violated his right to an open trial. Citing the recent Supreme Court opinions in State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009) and State v. Momah, 167 Wn.2d 140, 217

P.3d 321 (2009), defendant argues that trial court closed the courtroom without weighing the factors in State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995), mandating a retrial. (Opening Brief at 14).

The Court need not decide whether a retrial is mandatory. Defendant's right to a public trial does not require trial courts to hold work sessions on jury instructions in open court.

A defendant's constitutional right to a public trial requires that the court be open during "adversary proceedings" including evidentiary phases of the trial, suppression hearings, voir dire, and jury selection. State v. Sadler, 147 Wn. App. 97, 114, 193 P.3d 1108 (2008); State v. Rivera, 108 Wn. App. 645, 32 P.3d 292 (2001). But "[a] defendant does not ... have a right to a public hearing on purely ministerial or legal issues that do not require the resolution of disputed facts." Sadler, 147 Wn. App. at 114, 193 P.3d 1108.

State v. Koss, ___ Wn. App. ___, 241 P.3d 415, 418 (2010).

Trial courts routinely meet with counsel in chambers, off the record, to discuss jury instructions. This typically involves deciding on which pattern instructions to use, as well as comparing the parties' proposed instructions. Because the work session was off the record, no transcript exists for the discussion in this case. However, nothing in the Report of Proceedings suggest that the trial court varied from this familiar routine. (12/9/09 VRP 947)

("based on your comments in chambers I'm going to ask that we just give the WPICs").

Furthermore, it would have been impossible for the trial judge to resolve disputed facts in discussing jury instructions. By definition, the selection and wording of jury instructions is a question of law for the trial court to decide. "The specific language of jury instructions is a matter left to the trial court's discretion." In re Detention of Bergen, 146 Wn. App. 515, 533, 195 P.3d 529 (2008). As long as the trial judge presents the final instructions in open court and allows the attorneys to note exceptions, defendant's right to a public trial is satisfied.

The Court of Appeals in Koss rejected a Bone-Club argument for reasons equally persuasive here.

Counsel and the court met off the record in chambers and everyone agreed to remove accomplice language from the first degree burglary elements instruction. Report of Proceedings (RP) at 271. The court and counsel then went on the record in open court (with Mr. Koss now present) to address any objections or exceptions to the instructions. No one objected to the instruction or to the procedure.

The in-chambers conference was a ministerial legal matter. It did not involve disputed facts. Sadler, 147 Wn. App. at 114, 193 P.3d 1108. And ultimately it did not then implicate Mr. Koss's right to a public trial. Nor was it a critical stage that required Mr. Koss's presence. In re Pers. Restraint of Lord, 123 Wn.2d

296, 306, 868 P.2d 835 (1994) (in-chambers conferences between court and counsel on legal matters are not critical stages except when the issues involve disputed facts).

Koss, 241 P.3d at 418. The State respectfully requests the Court to reach the same conclusion in this case.

V. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that his trial counsel was constitutionally deficient by failing to object to two snippets of testimony. (Opening Brief 22-23). Both snippets involved defendant flirting with or being affectionate around young girls.

Counsel did not object to this testimony for two tactical reasons. First, counsel portrayed defendant as warm, gregarious adult who often showed physical affection to family members and friends.

Every time the tickling, the touching, the wrestling, the messages happen, what's the context of it? What's going on there? Do you think if Mr. Eagle was a rapist that he would do that out in front of everyone? Do you think that he would kiss someone? Or would he rather want to hide it, keep it in a closet so no one suspected. I submit to you it would have been the latter, and that if he was really a rapist he wouldn't have been so affectionate, he wouldn't have done those things.

(12/9/09 VRP 986). Defendant made no attempt to hide his physical nature.

Second, objecting to this evidence would signal that there was something wrong with this behavior. Any adult can make a mistake or say something in hindsight that looks bad. But as defense counsel argued, it is quite a different matter to sexually assault or rape a child. (12/9/09 VRP 986-87). Because counsel made a tactical choice not to object, defendant cannot with hindsight argue his counsel was constitutionally deficient. State v. Saunders, 91 Wn. App. 575, 578, 958 P.2d 364 (1998).

Viewing the evidence as a whole, the two snippets of testimony did not materially affect the trial. If the jury believed defendant Eagle's testimony, it merely reinforced that he was a joking, affectionate adult. If the jury believed beyond a reasonable doubt that Eagle raped Shilair and Brianne, two inappropriate acts or comments made no difference.

VI. THE LACK OF A UNANIMITY INSTRUCTION WAS HARMLESS ERROR

The State agrees that the Counts II and IV involved multiple acts against Shilair that required a unanimity instruction. No one – the Prosecutor, defense counsel, or the trial judge – raised this issue at trial or saw a problem in the jury instructions. As this Court recently concluded in Furseth, “the failure of the State to elect a

specific act or the trial court's failure to issue a unanimity instruction in a multiple acts case is constitutional error. Furseth, 156 Wn. App. at 520. The question is whether the Court must order a retrial on Counts II and IV involving Shilair.

Because defendant offered only a general denial and did not contest specific facts in Shilair's testimony, the error was harmless. The court's failure to give a unanimity instruction is harmless if a "rational trier of fact could find that each incident was proved beyond a reasonable doubt." State v. Camarillo, 115 Wn.2d 60, 65, 794 P.2d 850 (1990). In other words, the error is harmless if no rational trier of fact could find that the defendant committed one act but did not commit the other acts. State v. Allen, 57 Wn. App. 134, 139, 787 P. 2d 566 (1990).

If the jury is presented with the choice of either believing the victim, such that if one incident happened then all incidents happened, or believing the defendant who asserts a general denial, the failure to instruct is harmless. Camarillo, 115 Wn.2d at 71.

In State v. Camarillo, the child victim testified with detail as to three different sexual abuse incidents. Camarillo, 115 Wn.2d at 66-68. The defendant gave only a general denial. After reviewing the record, the Supreme Court concluded that the uncontroverted

evidence revealed no factual differences between the incidents. Camarillo, 115 Wn.2d at 70. Noting that a jury is free to believe if one incident happened, all of them happened and that credibility determinations are for the jury, the Court found that there was no rational basis for the jurors to distinguish among the acts described. The error was harmless because, given the testimony and asserted defense, the jurors had been faced with the decision of whether to believe the victim and convict or believe the defendant and acquit. Camarillo, 115 Wn.2d at 71.

In State v. Loehner, 42 Wn. App. 408, 711 P.2d 377 (1985), *rev. den.*, 105 Wn.2d 1011 (1986), defendant raised juror unanimity under facts very similar to those here. Defendant was charged with a single count of child rape but the evidence at trial described several occurrences. Loehner, 42 Wn. App. at 409. The victim testified in detail about the first episode and then testified, without objection, that the defendant did the same thing in later incidents. Loehner, 42 Wn. App. at 410. While the court found error, it concluded the error was harmless.

...if the jury believed the evidence of the first rape, no rational trier of fact could have entertained a reasonable doubt as to the later ones because those were dependent upon the description of the first one. If the rational trier of fact entertained a reasonable

doubt as to the episode in detail, of necessity the rational trier of fact would have a reasonable doubt as to the subsequent ones, also.

Loehner, 42 Wn. App. at 410.

Finally, in State v. Allen the court found the lack of a jury unanimity instruction harmless because there was no rational basis for the jurors to distinguish among the acts described. Allen, 57 Wn. App. at 139. The victim described similar conduct for each incident and the defendant gave a general denial, with no attempt to distinguish between the incidents. The court found any error harmless, concluding that the jury had to either believe the victim to convict or believe the defendant to acquit. Allen, 57 Wn. App. at 139.

Here, as in Camarillo, Loehner, and Allen, the jury had the choice to believe either the victim or the defendant, and there was no rational basis to distinguish between the incidents given the asserted defense. Defendant was unequivocal in denying that any of the alleged behavior took place. As described above, he offered a story exactly opposite of Shilair's testimony. By convicting defendant on Counts II and IV, the jury necessarily concluded there is no reasonable doubt that the abuse occurred in its entirety. If the

jury had a reasonable doubt about any aspect of Shilair's testimony, they would have acquitted.

The jury's verdict on Counts II and IV is sound. There is no need for a retrial.

CONCLUSION

A Whatcom County jury convicted defendant Calvin Eagle after a fair trial. Because evidence of his guilt was overwhelming, the State of Washington respectfully requests this Court to affirm his conviction and dismiss this appeal.

DATED this 30th day of November, 2010.

DAVID S. McEACHRAN
Whatcom County Prosecuting Attorney

By 

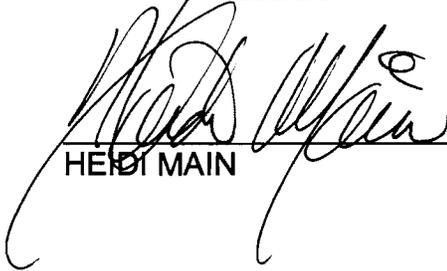
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Bellingham, WA 98225
360/752-1500

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Brief of Respondent** to:

David M. Lind
Nielson Broman & Koch PLLC
1908 E. Madison St.
Seattle, WA 98122

DATED this 30th day of November 2010.



HEIDI MAIN

APPENDIX A

ORIGINAL

SCANNED 2

FILED IN OPEN COURT
12/1/20 09
WHATCOM COUNTY CLERK
By _____
Deputy M

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

THE STATE OF WASHINGTON,)	No.: 08-1-00814-5
)	
Plaintiff.)	SECOND AMENDED
)	INFORMATION FOR:
vs.)	
)	RAPE OF A CHILD IN THE FIRST
CALVIN ARTIE EAGLE,)	DEGREE, COUNTS I-II
)	RAPE OF A CHILD IN THE SECOND
Defendant.)	DEGREE, COUNTS III-IV

I, ERIC J. RICHEY, Deputy Prosecuting Attorney in and for Whatcom County, State of Washington, comes now in the name and by the authority of the State of Washington and by this information do accuse CALVIN ARTIE EAGLE with the crimes of RAPE OF A CHILD IN THE FIRST DEGREE, COUNTS I-II and RAPE OF A CHILD IN THE SECOND DEGREE, COUNTS III-IV, committed as follows:

then and there being in Whatcom County, Washington,

RAPE OF A CHILD IN THE FIRST DEGREE, COUNT I

That during the time intervening between the 5th day of July, 2004, and the 12th day of September, 2007, the said defendant, CALVIN ARTIE EAGLE, then and there being in said county and state, did have sexual intercourse with B.B., who was less than twelve years old and not married to the defendant and the defendant was at least twenty-four months older than B.B.; in violation of RCW 9A.44.073, which violation is a Class A Felony;

RAPE OF A CHILD IN THE FIRST DEGREE, COUNT II

That during the time intervening between the 14th day of October, 2003, and the 13th day of October, 2005, the said defendant, CALVIN ARTIE EAGLE, then and there being in said county and state, did have sexual intercourse with S.M., who was less than twelve years old and not married to the defendant and the defendant was at least twenty-four months older than S.M.; in violation of RCW 9A.44.073, which violation is a Class A Felony;

INFORMATION - 1

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Whatcom County Prosecuting Attorney
311 Grand Avenue, Suite #201
Bellingham, WA 98225
(360) 676-6784
(360) 738-2532 Fax

1 **RAPE OF A CHILD IN THE SECOND DEGREE, COUNT III**

3 That during the time intervening between the 13th day of September, 2007, and the 18th day of
5 June, 2008, the said defendant, CALVIN ARTIE EAGLE, then and there being in said county
7 and state, did have sexual intercourse with B.B. who was at least twelve years old but less than
9 fourteen years old and not married to the defendant and the defendant was at least thirty-six
11 months older than B.B.; in violation of RCW 9A.44.076, which violation is a Class A Felony;

9 **RAPE OF A CHILD IN THE SECOND DEGREE, COUNT IV**

11 That during the time intervening between the 14th day of October, 2005, and the 14th day of
13 June, 2008, the said defendant, CALVIN ARTIE EAGLE, then and there being in said county
15 and state, did have sexual intercourse with S.M., who was at least twelve years old but less than
17 fourteen years old and not married to the defendant and the defendant was at least thirty-six
19 months older than S.M.; in violation of RCW 9A.44.076, which violation is a Class A Felony;

21 contrary to the form of the Statute in such cases made and provided and against the peace and
23 dignity of the State of Washington.

25 DATED THIS 1ST day of December, 2009.

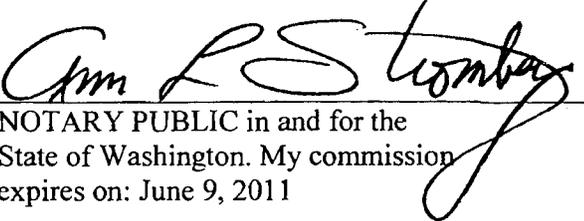
27 
29 _____
31 ERIC J. RICHEY, WSBA #22860, Deputy Prosecuting Attorney
33 in and for Whatcom County, State of Washington

35 STATE OF WASHINGTON)
37) ss.
39 COUNTY OF WHATCOM)

41 I, Eric J. Richey, being first duly sworn on oath, depose and say: that I am a duly
43 appointed and acting Deputy Prosecuting Attorney in and for Whatcom County, State of
45 Washington. I have read the foregoing information; know the contents thereof and the same is
47 true as I verily believe.

41 
43 _____
45 ERIC J. RICHEY, #22860
47 Deputy Prosecuting Attorney

49 SUBSCRIBED AND SWORN to before me this 1ST day of December, 2009.

51 
53 _____
55 NOTARY PUBLIC in and for the
57 State of Washington. My commission
59 expires on: June 9, 2011

APPENDIX B

SCANNED 7

FILED IN OPEN COURT
12 / 10 20 09
WHATCOM COUNTY CLERK

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

[Handwritten signature]

State of Washington,
Plaintiff,

No. 08-1-00814-5

VERDICT FORM

CALVIN ARTIE EAGLE,
Defendant.

Reached @ 3:50

We, the jury, find the defendant, CALVIN ARTIE EAGLE,
Not Guilty (Write in "not guilty" or "guilty") of the crime of
Rape of a Child in the First Degree, Count I

We, the jury, find the defendant, CALVIN ARTIE EAGLE,
Guilty (Write in "not guilty" or "guilty") of the crime of
Rape of a Child in the First Degree, Count II

We, the jury, find the defendant, CALVIN ARTIE EAGLE,
Guilty (Write in "not guilty" or "guilty") of the crime of
Rape of a Child in the Second Degree, Count III

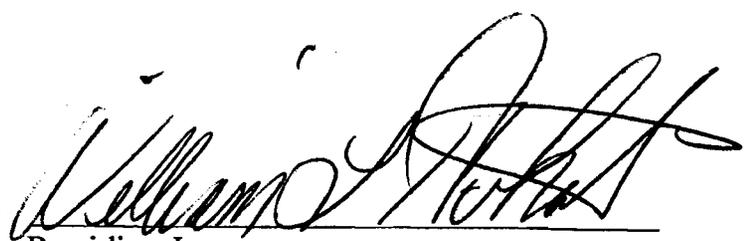
80

We, the jury, find the defendant, CALVIN ARTIE EAGLE,

Guilty (Write in "not guilty" or "guilty") of the crime of

Rape of a Child in the Second Degree, Count IV

DATE: December 10, 2009



Presiding Juror