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NO. 58574-6

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

GARTH SNIVELY,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S BRIEF

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I. ISSUES PRESENTED

- A. **Whether the jury's determination that Snively's mental abnormality continues to make him likely to reoffend if he is not confined was supported by sufficient evidence.**
- B. **Whether the trial court abused its discretion when it admitted evidence that Snively had been unable to secure housing in the event of unconditional release.**

II. STATEMENT OF THE CASE

A. Procedural History

The State of Washington filed a petition in Snohomish County Superior Court in April 2003, alleging that Snively is a sexually violent predator (SVP). CP at 592-93. Following a jury trial in 2006, Snively was civilly committed as an SVP. CP at 568-69. He appealed, this Court affirmed and review was denied. *In re Detention of Snively*, 2007 WL 4296611, *rev. denied* 164 Wn.2d 1010 (2008) (*Snively I*).

Snively then filed a personal restraint petition (PRP), seeking to withdraw his guilty plea to the three sexual convictions underlying his civil commitment, and to vacate his SVP commitment order. *In re Snively*, 2010 WL 703162 at 1 (*Snively II*). This Court held that Snively could withdraw his guilty pleas to one count of indecent liberties, but that his conviction for two counts of child molestation would stand, as would his civil commitment. *Id.* at 8. The Washington Supreme Court reversed in part, holding that Snively's sole remedy for the indecent

liberties conviction was correction of the judgment and sentence. *In re Snively*, 180 Wn. 2d 28, 30, 320 P.3d 1107 (2014) (*Snively III*).

On March 30, 2012, the trial court entered an order conditionally releasing Snively to the Secure Community Transition Facility (SCTF) on McNeil Island. Ex. 7. In October that year Snively petitioned for unconditional release, relying on a Department of Social and Health Services (DSHS) evaluation that concluded he was no longer an SVP. CP at ____ (Sub No. 183, Petition for Unconditional Release Trial, filed 10/24/12). The parties agreed to an order setting the unconditional release trial in October 2013. CP at ____ (Sub No. 192, Agreed Order Setting Trial Date, filed 1/2/13). On October 24, 2013, the jury returned a verdict finding that Snively continued to be an SVP. CP at 21. The trial court entered an order continuing Snively's civil commitment. CP at ____ (Sub No. 286, Order of Commitment, filed 10/24/13). Snively timely appealed. CP at 1-3.

B. Factual Background

Snively has never had sexual contact with an adult. CP at ____ (App. 1 at 15; Sub No. 291, Stipulation of the Parties to Videotaped Deposition Transcript of Garth Snively, filed 11/05/13).¹ He was 63 years

¹ Appendix 1 is the transcript of a portion of the September 17, 2013 videotaped deposition of Snively that was played for the jury at trial. Citations are to the actual page numbers of the transcript.

old at trial. CP at ____ (App. 1 at 7). He agrees that he suffers from pedophilia. CP at ____ (App. 1 at 5). He is sexually aroused by contact with the genitals of young boys ages six to ten. CP at ____ (App. 1 at 5-6). While he has victimized boys over ten years old and as young as three, his preference is for eight or nine year olds. CP at ____ (App. 1 at 6). Snively does not like boys once they reach age 13 or 14 because they have grown beyond his range of interest. CP at ____ (App. 1 at 13-14). He is also aroused by diapers and urine. CP at ____ (App. 1 at 6).

Snively initially disclosed having 100 victims. CP at ____ (App. 1 at 33). Then while in treatment in the Department of Corrections (DOC) he estimated he had over 50 victims. *Id.* In his deposition for the recent trial Snively estimated he had “37 or 39 actual victims that I can name.” *Id.*

Snively began molesting children in 1963, when he was 13. CP at ____ (App. 1 at 6). He found victims by offering himself as a babysitter to neighborhood families. *Id.* Later, he developed grooming techniques directed at children and their families. CP at ____ (App. 1 at 21). He joined various organizations in order to appear trustworthy. CP at ____ (App. 1 at 22).

For example, Snively was involved in both the Cub Scouts and Boy Scouts. CP at ____ (App. 1 at 16). When he was 21 he met Michael

through the Scouts. CP at ____ (App. 1 at 11). He molested Michael approximately 150 times. *Id.* He remained active in the Cub Scouts and Boy Scouts organizations as an adult, becoming a Scout Master and a Boy Scout Commissioner. CP at ____ (App. 1 at 16).

In 1970, Snively joined the Big Brothers organization. CP at ____ (App. 1 at 7). He molested several children who were assigned to him by that organization, repeatedly. CP at ____ (App. 1 at 7-9). In 1977 a boy told his mother that Snively had molested him. CP at ____ (App. 1 at 14). The Big Brothers terminated him and agreed that if he went through a treatment program the organization would not report him to the police. *Id.*

Snively joined the Arlington Free Methodist Church. CP at ____ (App. 1 at 16). It became another avenue for accessing children. CP at ____ (App. 1 at 17). Snively became a church camp counselor and volunteered in the nursery. CP at ____ (App. 1 at 17-18).

In 1976 Snively married Roberta. CP at ____ (App. 1 at 12). He remained married to her until her death in 2000, though due to his incarceration he did not live with her after January 1994. *Id.* Their marriage was never consummated, even though she wanted sexual relations. CP at ____ (App. 1 at 13). Roberta's job required her to travel frequently and Snively took advantage of her absences. CP at ____

(App. 1 at 19-20). For example, he repeatedly molested his wife's nephews, ages five and seven. CP at ____ (App. 1 at 18-19).

Eventually one of Snively's victims disclosed his offending. CP at ____ (App. 1 at 31). Police investigated and discovered other victims. CP at ____ (App. 1 at 32). Snively was charged with two counts of Child Molestation First Degree. Ex. 1. Count one was for offenses against a single victim that occurred between July 1990 and May 1993. *Id.* Count two concerned offenses against four victims that also occurred between July 1990 and May 1993. *Id.* Snively pled guilty and was sentenced on January 27, 1994. Ex. 2. He received a sentence of 130 months on each count, to be served concurrently. *Id.*

The State also charged Snively with one count of indecent liberties for his offenses against Roberta's nephews. Ex. 3. He pled guilty to that offense and was convicted and sentenced on the same day as his other offenses. Ex. 4. He received a sentence of 27 months, to be served concurrently with his sentences for child molestation. Ex. 4.

III. ARGUMENT

A. **Substantial Evidence Supported The Jury's Determination That Snively's Pedophilia And Sexual Arousal To Urine And Diapers Make Him Likely To Reoffend If He Is Released**

Snively argues that the State failed to produce sufficient evidence that he is likely to commit predatory acts of sexual violence if released.

His argument, in effect, asks this Court to re-determine witness credibility and reweigh the evidence. Snively also asks this Court to elevate statistical science to a realm where it is determinative, and a jury's unanimous verdict can be reversed because statistical instruments considered by experts indicate low risk. The statistical data, however, was merely one component relied on by the State's expert, Dr. Amy Phenix (Phenix), in a comprehensive risk assessment. The jury's finding was amply supported by Phenix's expert opinion testimony, as well as by extensive evidence about Snively's long history of predatory crimes against children and concerning behavior and statements while on conditional release.

1. Standard of Review

In reviewing the sufficiency of the evidence this Court applies the criminal standard. *In re Detention of Thorell*, 149 Wn.2d 724, 744, 72 P.3d 708 (2003). "Under this approach, the evidence is sufficient if, when viewed in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* This Court will uphold the commitment if any rational trier of fact could have found the essential elements beyond a reasonable doubt. *In re Detention of Audett*, 158 Wn.2d 712, 727-28, 147 P.3d 982 (2006). All reasonable inferences from the evidence are drawn in favor of the

State and interpreted most strongly against the appellant. *Id.* at 727. Appellate courts defer to the trier of fact regarding a witness's credibility, conflicting testimony, and the persuasiveness of the evidence. *In re Detention of Broten*, 130 Wn. App. 326, 335, 122 P.3d 942 (2005).

2. Dr. Phenix's Testimony and Opinions Constituted Sufficient Evidence to Support the Jury's Finding that Snively was Likely to Commit Predatory Acts of Sexual Violence if not Confined in a Secure Facility

The State was required to prove, among other things, that Snively is "likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18). A person is "likely" to commit such offenses if they will do so "more probably than not[.]" RCW 71.09.020(7). Here, when the evidence is viewed in a light most favorable to the State, a rational jury could have found Snively likely to reoffend beyond a reasonable doubt.

Dr. Phenix testified that, in her opinion, Snively was likely to engage in predatory acts of sexual violence if not confined in a secure facility. 10/18/13 RP at 32. She formed her opinion after considering a wide range of information, including two risk assessment actuarial instruments, known as the Static-99R and Static 2002R. *Id.* at 33. She is very familiar with those instruments because she has worked with the researchers who developed them, is currently a member of the Static-99

research team and is an author of the instruments' scoring rules. *Id.* Dr. Phenix always begins a risk assessment by scoring an actuarial instrument. *Id.* at 34. She testified, however, that the instruments are only moderate predictors of recidivism – those with high scores may not reoffend while some with low scores will. *Id.* at 35. This moderate predictive accuracy means that relying only on actuarial results will produce an error rate of approximately 30 percent. *Id.* at 36.

Therefore, and because these instruments assess only unchanging, or static, factors, Dr. Phenix considers “many other risk factors not contained in these static actuarial instruments[.]” *Id.* at 34. Some of these are known as dynamic, or changeable, risk factors. *Id.* She then takes into account “any kind of individual considerations in case that might somehow affect an individual’s risk.” *Id.* She only considers factors that are scientifically linked to recidivism. *Id.* at 35.

Dr. Phenix arrived at an overall score of zero for Snively on the Static-99R. *Id.* at 45-46. She believed this score to be a “gross underestimate of his overall risk[.]” *Id.* at 78. She pointed out some of her considerations. Asked to opine which research-supported risk factor she would consider if only allowed to consider one, she testified, “Sexual deviance and the severity of sexual deviance.” *Id.* at 74. This factor is “supported by all of the research.” *Id.* Snively’s sexual deviance is

demonstrated in part by the fact that he suffers from three paraphilias. “Paraphilia” is an umbrella term that includes disorders of sexual deviance, the principal features of which are:

[R]ecurrent, intense sexually arousing fantasies, sexually arousing urges or behaviors that generally involve non human objects, for example sexual arousal to women's panties or shoes, the suffering or humiliation of oneself or one's partner, more commonly known as sexual sadism or sexual masochism, or children or other non consenting persons.

10/17/13 RP at 123-24. Snively's paraphilias include 1) pedophilia, sexually attracted to boys, exclusive type; 2) paraphilia not otherwise specified, urophilia; and 3) fetishism. *Id.* at 124. Snively's pedophilia causes him to be sexually aroused to prepubescent boys. *Id.* at 125. His urophilia causes him to be sexually aroused to behaviors involving urine during sexual activity. 10/18/13 RP at 17. Snively's fetishism addresses his sexual arousal to non-living objects, in his case placing prepubescent boys and himself into diapers. *Id.* at 20. These three paraphilias work together as a mental abnormality that predisposes him to engage in deviant sexual behavior with very young boys. *Id.* at 24-25.

For example, Snively would sometimes diaper a young boy and then masturbate in front of him. CP at ____ (App. 1 at 20). He asked another boy to diaper him, Snively, and to put powder on Snively's genitals. CP at ____ (App. 1 at 24). He particularly likes boys who wet

the bed. *Id.* Snively liked to have boys spend the night, would give them fluids before bed and then encourage them to wear a diaper. CP at ____ (App. 1 at 25). The following morning he would use a “ruse to check their diapers” and molest them. CP at ____ (App. 1 at 26).

Thus, because Snively “has a very deviant and very unusual and rare paraphilic condition[,]” his score of zero on the Static-99R was not as meaningful because there would be “few offenders in that sample that were similar to him with a score of 0.” 10/18/13 RP at 68.

For example, when Snively scored a “minus three” on the first of ten items on the instrument, which evaluates “age,” Dr. Phenix opined that Snively’s age was unlikely to reduce his risk in the way it did when statistically averaged among large groups of offenders:

I think that Mr. Snively has been highly sexually preoccupied throughout his life. I think it is evident by his offending, by his admissions and statements about his sexual drive. I think that he is still, as I testified to earlier, concerned about continuing to have deviant sexual fantasies, how he will handle that. He says it will be present for the rest of my life, and he is absolutely right about that. Some offenders just have more sexual preoccupation than others, and so, that would be comparing him to, you know, 8,000 sex offenders who are likely to have very few of those offenders with the strong sexual deviancy that Mr. Snively has. And Mr. Snively has three paraphilias, and most offenders would not have one at all or they might have one paraphilia, so I do not see looking individually at Mr. Snively like his risk would be reduced in a way that many older offenders would have reduced risk.

Id. at 38-39.

Another item scored Snively on his number of sex offense convictions prior to his latest, or “index” conviction. *Id.* at 41-42. Despite having at least dozens of victims, some of whom he offended against hundreds of times, Snively had no convictions prior to his 1993 index offenses. *Id.* at 42. He thus had zero points for prior offending, despite his 30-year history of preying on young boys. *Id.* Dr. Phenix opined that Snively’s actuarial score for prior offending, like his score for age and his overall score, did not accurately capture his risk. *Id.* at 42-43.

When she looked at relevant information not captured by the actuarial instruments, Dr. Phenix found “other overwhelming factors” that influenced her opinion. *Id.* at 78. In addition to Snively’s unique sexual deviancy, Dr. Phenix opined that Snively risk was exacerbated by “the extent of his offending and how entrenched his paraphilias are with no other alternatives to express his -- no appropriate alternatives to express his sexuality.” *Id.* Snively admitted that, if released, he had no sexual outlet. CP at ____ (App. 1 at 51). He has never had sexual contact with an adult. CP at ____ (App. 1 at 15). At the time of his initial commitment trial in 2006 he had planned on finding other adults with diaper fetishes, but now had given that up as “not very feasible.” CP at ____ (App. 1 at 52). He was interested in trying “arousal reassignment,” or changing

himself into a homosexual man, but was “not physically stimulated and aroused at this point to contact.” CP at ____ (App. 1 at 51-52).

After testifying to the various data she considered, Dr. Phenix summarized her risk assessment opinion, pulling together the different components and factors she considered. Because Snively challenges the sufficiency of the evidence, and because Dr. Phenix provided a concise, cogent and complete defense of her opinion, the State quotes her answer in full below:

Despite low scores on the Static-99, I think there are other overwhelming factors that influence my opinion about his risk. I think that those scores are a gross underestimate of his overall risk because of his unique and serious sexual deviancy, the extent of his offending and how entrenched his paraphilias are with no other alternatives to express his - - no appropriate alternatives to express his sexuality. If he was released unconditionally, he would have absolutely no supervision after five months. He would -- he has no community support in terms of friends, activities, groups. He is a person that is prone to be -- he's talked about being lonely and social rejection. He is a person who is likely to be socially rejected in the community. It would be difficult for him to establish these social connections that will meet some of his emotional needs. He will no longer be able to turn to children to meet his emotional needs, and that will be a very difficult, lonely life for him.

He is a person who has treatment gains, which is a very positive thing, but needs continued treatment in my opinion for the rest of his life. In my interview he was very cavalier about continuing to get treatment; maybe for about a year, and there are some questions about his transparency and efforts in his treatment in the past recent years. He is a person who said that his offense cycle is triggered by major

life transitions, and so, I believe if he is unconditionally released that he will be placed into a situation where he is anxious, he has negative mood states. He has poor coping skills and no support, and I think that that would be a trigger for him to be in his offense cycle.

I also think because if he is unconditionally released, that the requirement would be that he is to register as a sex offender, but he has very adept skills at endearing himself to vulnerable people who may not even know anything about sex offenders who register. He is very sophisticated, and if he offers things that people want and need, that -- that people could either not know or not realize his risk as they let him into their lives.

10/18/13 RP at 78-79.

Dr. Phenix's opinion, amply supported by her testimony about the data and factors she considered, and viewed in a light most favorable to the State, constitutes substantial evidence that would support a rational jury's determination that Snively's mental condition makes him likely to reoffend if was released. This Court defers to the jury and does not re-determine Dr. Phenix's credibility or reweigh the evidence. *Broten*, 130 Wn. App. at 335. Snively's challenge to the sufficiency of the evidence should be rejected.

3. Other Evidence Amply Supported the Jury's Finding

The State did not rely solely on Dr. Phenix's testimony to prove that Snively was likely to reoffend if released. Other witnesses and evidence undermined Snively's contention that he had made substantial

progress in treatment and demonstrated his continuing risk to the community.

In this unconditional release trial, evidence of Snively's prior civil commitment was admissible. RCW 71.09.090(3)(c) ("Evidence of the prior commitment trial and disposition is admissible."). The State proved that in July, 2006, a jury had determined that Snively was an SVP, and that he had been civilly committed following the verdict. Exs. 5, 6. That evidence established as a verity the fact that Snively was an SVP as of that date. *See State v. McCuiston*, 174 Wn.2d 369, 385, 275 P.3d 1092 (2012) (finding that person is an SVP constitutes a verity for future determinations). Besides establishing that at age 56 and beyond Snively was a sexually violent predator, it is noteworthy that he was civilly committed despite very low actuarial scores. 10/22/13 RP at 155. In 2006, Snively's expert scored him a "2" on the Static 99, placing him in the low moderate group where only 17.5% of those with Snively's score recidivated. *Id.* The prior adjudication, which had taken place despite Snively's low statistical probability of recidivating, was significantly probative of whether he remained an SVP in 2013.

The State presented the testimony of Dr. Joe Mitrovich, who had treated Snively at the Special Commitment Center (SCC) on McNeil Island in 2009 and 2012. 10/17/13 RP at 41. Dr. Mitrovich worked with

Snively on his transparency, deviant sexual interest and on developing interventions. *Id.* at 42. He asked Snively to complete his “treatment needs and interventions” assignment. *Id.* at 43. In that assignment Snively was supposed to identify his risks and develop cognitive and behavioral interventions to mitigate them. *Id.* at 43-44. But Snively refused to complete the assignment and told Dr. Mitrovich he felt “he had already done it and did not want to do it again.” *Id.* at 45. When Dr. Mitrovich worked with Snively again in 2012, Snively presented what appeared to be the same unfinished assignment. *Id.* Dr. Mitrovich noted that it still lacked specificity and cognitive interventions. *Id.* Another assignment, called “offense cycle here and now,” was of “mixed quality” and Snively “missed the point of the assignment.” *Id.* at 49-50.

Dr. Mitrovich provided treatment in program area three, which is more advanced treatment for those preparing to transition out of the SCC. *Id.* at 51. Residents in program area three are expected to be more advanced, to have completed most of the assignments and be working on revising them. *Id.* at 52. Snively’s work was not of program area three quality. *Id.* at 54. Snively’s “transparency was very lacking.” *Id.* Snively denied having any fantasies and described his masturbation as “mechanical.” *Id.* at 54-55. While he did better in 2012 than in 2009, his disclosures of fantasies were “very vague in nature.” *Id.* at 55. When

Snively did disclose a fantasy in which he had talked to a boy about masturbation, he declined to discuss it in detail. *Id.* at 55-56. Snively's admission in 2012 that he was having sexual thoughts and fantasies was an improvement over 2009, when he would not acknowledge them, but he still refused to address his thoughts and fantasies in treatment. *Id.* at 57.

In 2009 Snively informed his treatment group that his computer had been confiscated because "child erotica" had been discovered on it. *Id.* at 57-58. He said that the pictures belonged to his neighbor and "this disk from somebody else got onto his computer[.]" *Id.*

In his videotaped deposition played for the jury at trial, Snively testified that the SCC searched his computer in 2009 and found "erotica," which he described as "nonsexual explicit naked pictures." CP at ____ (App. 1 at 35.) He explained: "SCC found some erotica called The Colony, which is pictures of mostly boys I don't recall if there were any girls in that or not -- at a nudist colony in Europe." *Id.* Snively went on to explain how his problems of "social rejection and loneliness" led to pictures of naked boys appearing on his computer:

Q. How did it get on your computer?

A. I placed it there. I had been encouraged by another resident. He wanted some copies of some of those pictures put on a disk that he could watch on his DVD player. And one of my problems, I guess you'd call it, one of my risk areas is what's called social rejection and loneliness, which

makes me vulnerable to being convinced to do things to help other people to gain friendship. And I was -- I subsequently had become involved with him and put those pictures on my computer to make those disks for him.

Id. at 35-36.

Snively claimed that he must have made a “drag and drop” mistake and accidentally put the pictures of naked boys into a file on his computer while copying them for a friend. *Id.* at 36-37. He estimated the pictures had been on his computer for about one year when they were discovered.

Id. at 37.

Snively’s claim that the pictures were accidentally left on his computer due to his lack of sophistication was not credible. He had worked at Boeing from 1979 until his arrest in 1993. CP at ____ (App. 1 at 33). There, he had helped develop a project for automated computer testing of a plane’s wiring system. CP at ____ (App. 1 at 34). He then worked in a “black program” for quality assurance of programs written by software engineers. *Id.* For his last five years at Boeing he worked in computer support, coordinating changes to software. *Id.* In the 2009 search of his computer, in addition to pictures of naked boys, several contraband computer programs were discovered, including sophisticated utilities such as “Eraser” that could delete files leaving no traces.

CP at ____ (App. 1 at 42-43). A similar contraband utility called BCWipe had also been found on his computer. CP at ____ (App. 1 at 44).

There was more evidence of Snively's secrecy and lack of transparency. While on conditional release Snively had wanted to visit his brother, Kevin Snively. CP at ____ (App. 1 at 58-59). Kevin grows medical marijuana. CP at ____ (App. 1 at 59). The SCC made a site visit to Kevin's home preparatory to authorizing Snively's visit. *Id.* Snively kept the medical marijuana a secret from the SCC. *Id.* Instead of disclosing it, he and his brother agreed that Kevin would hide all traces of it before the site visit. CP at ____ (App. 1 at 59-60). The SCC inspectors discovered the marijuana and terminated the site visit. *Id.* Snively blamed his brother, testifying that he had been led to believe the marijuana would be "all cleaned up" and the inspectors would not see it. CP at ____ (App. 1 at 60).

The State presented evidence that Snively had fixated on children on two occasions when escorted into the community. Scotti Bower had worked as an SCC security guard. 10/17/13 RP at 104. One of her duties was to escort SCC residents on trips into the community. *Id.* at 104-105. On November 16, 2011, she and two other staff escorted Snively and two other SCC residents to a doctor's office in Puyallup. *Id.* at 105-106. Due to the number of children in the main waiting area, she moved Snively to a

side area. *Id.* at 106. After Snively completed his appointment they waited for the other residents. *Id.* Snively began staring at a boy was nearby and who appeared to be less than ten years old. *Id.* at 106-107. Ms. Bower tried to get Snively's attention; when he when he noticed her staring at him he stopped looking at the boy, but then began staring at him again. *Id.* at 107-108. Snively stared at the boy for approximately seven to ten minutes. *Id.* at 108. The boy then left the area and Snively picked up a magazine. *Id.* When the boy returned from his appointment and stood at the elevator with the woman accompanying him, Snively stared at the boy again until he disappeared into the elevator. *Id.*

Dennis Gallegos worked at the SCTF as a Residential Rehabilitation Counselor 2. CP at 6. On April 4, 2012, he escorted Snively to the Pierce County Courthouse to register as a sex offender because Snively had recently been conditionally released to the SCTF. CP at 7. As they crossed the street to the courthouse they came across two small boys. CP at 11-12. They stopped so the boys could enter the courthouse first. CP at 12. Snively watched the children for approximately 30 seconds, until Gallegos said, "Mr. Snively, what are you doing? What are you looking at? You need to look away from where the children are walking." CP at 13.

Snively claims that four doctors testified he was “not sufficiently dangerous to warrant confinement.” Brief of Appellant at 6. He is playing fast and loose with the facts. Snively’s experts Drs. Packard and Marquez conducted evaluations of Snively’s mental state and completed a risk assessment. No one else except Dr. Phenix conducted a risk assessment or testified about Snively’s risk. Dr. Duthie, called as a witness by Snively, testified as a treatment provider and not as a forensic expert. He did not conduct a risk assessment or offer a risk assessment opinion. Snively likewise called Dr. Hawkins to testify as his treatment provider. Dr. Hawkins did not conduct a risk assessment or offer a risk assessment opinion.

Dr. Hawkins is Snively’s sex offender treatment provider in the community, is the director of the Marriage Recovery Center and has a passion for working with couples in crisis. 10/23/13 RP at 117. He has a website called “yourrelationshipdoctor.com,” a national following, and international clients. *Id.* He is a prolific author who has written 35 books of which he has sold over 500,000 copies. *Id.* at 119, 121.

But Dr. Hawkins was not a prolific writer when it came to reporting on Snively’s treatment progress. An early report for June 2012 was a single page with one paragraph of seven lines. *Id.* at 122-23. The same was true of his July 2012 report, except that it was only six lines

long. *Id.* at 124. His August 2012 report was one page of nine lines. *Id.* That report indicated that Snively was interest in attending a “gay support group.” *Id.* Incredibly, Dr. Hawkins testified, “That seems to be his sexual preference.” *Id.* at 125. His reports for September 2012 through February 2013 were also one-page reports. *Id.* at 125-28.

After the SCC told Dr. Hawkins his reports were insufficient he submitted March and April 2013 reports that were longer than one page but were obvious cut-and-paste jobs, with March dates appearing in the April report. *Id.* at 128. Dr. Hawkins testified, “This is obviously some kind of an error that I can't explain at this time.” *Id.* The State then led Dr. Hawkins through his reports from March 2013 through September 2013 and established that he had written essentially the same things in every report, with few exceptions. *Id.* at 129-33. For example, in every report from March through September, Dr. Hawkins wrote the following, notwithstanding Snively’s history of entrenched pedophilia:

Mr. Snively historically saw children as being a safe place. I wasn't going to be rejected or ostracized. He enjoyed doing things with children, taking them places and doing things with them. Currently Garth does not identify with children. He no longer has an interest in children's activities or in children.

Id. at 133.

Dr. Hawkins had Snively update his sexual autobiography. *Id.* at 134. Asked whether he saw any “thinking errors” in that document, he testified, “I am not conversant with this at this moment.” *Id.* Dr. Hawkins agreed that if a predatory offender writes a sexual autobiography that claims that others have sought him out, “rather than the other way around,” it would constitute thinking errors. *Id.* at 135. He was then led through Snively’s sexual autobiography to confirm that Snively had repeatedly claimed that children had approached *him*, and that others had approached *him* to work with or mentor children. *Id.* at 135-43. He eventually agreed that Snively’s sexual autobiography was “riddled with massive thinking errors[.]” *Id.* at 143.

In sum, evidence in addition to Dr. Phenix’s expert testimony supported the jury’s finding that Snively’s mental abnormality made him likely to reoffend. He had been adjudicated as sexually dangerous in 2006 despite low statistical probabilities. He did not perform satisfactorily in treatment in the institution and refused to complete an important assignment addressing how he would intervene when his urges and fantasies challenged him. The evidence showed that he had been found with pictures of naked boys on his computer and his explanation was not credible. He had hidden information about his brother’s medical marijuana from site inspectors. And, rather than being challenged in

community treatment, he was essentially given a free pass. So convincing and predatory is Snively that he had taken advantage of a family with a dying son so he could molest the siblings and other relatives. *See* testimony of Rebecca Rybacki, 10/17/13 RP at 23-29. All of this was before the jury. Viewing this evidence in a light most favorable to the State, a rational jury could have found that Snively is likely to reoffend if released unconditionally.

B. The Trial Court Properly Admitted Evidence That Snively Did Not Have Housing

Snively argues that the trial court abused its discretion when it admitted testimony that Snively had failed to find suitable housing for his possible release. His argument rests on a misinterpretation of the statute and case law. Evidence about release conditions and necessary components that are missing from a person's release plan is admissible because it is probative of risk.

1. Standard of Review

This Court reviews a trial court's decision to admit evidence under the abuse of discretion standard. *In re Detention of West*, 171 Wn.2d 383, 396-97, 256 P.3d 302 (2011). A trial court has abused its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *Id.* at 397. "Because relevance is a judgment dependent on the

surrounding facts, the trial court enjoys broad discretion in deciding whether evidence is relevant to these three elements.” *Id.* (referring to the three elements necessary for civil commitment of an SVP).

2. Snively’s Lack of Housing was Relevant to his Risk of Reoffending

Snively argues that the SVP statute “does not permit admission of Mr. Snively’s lack of housing for the purpose of establishing dangerousness.” Brief of Appellant at 18. His argument fails because evidence about Snively’s release environment, including his lack of housing, is relevant to his recidivism risk, whether it mitigates or exacerbates it. Evidence of Snively’s lack of a release plan and failure to secure housing was properly admitted.

Snively does not appeal the trial court’s decision that evidence of an inadequate release plan was admissible, but only from a separate ruling admitting evidence of Snively’s lack of housing. Snively first moved the trial court to prohibit the State from arguing that his risk is adversely affected by his inadequate release plan. CP at 264-66; 10/14/13 RP at 60-73. That motion was denied. RP at 73-74. Snively does not assign error to the trial court’s ruling on this pretrial motion (No. 14) nor argue that it was error. It is therefore a verity on appeal that evidence about deficiencies in Snively’s release plan was properly admitted. Snively also

moved the trial court, in a related motion (No. 14a) to prohibit argument that he lacked housing. CP at 266; 10/14/13 RP at 74-75. That motion was also denied and Snively has assigned error to the trial court's ruling on that motion only. Brief of Appellant at 1.

The jury had to decide whether Snively's mental abnormality made him "likely to commit predatory acts of sexual violence **if not confined in a secure facility.**" RCW 71.09.020(18). This language requires consideration of Snively's release environment by "focusing the attention of the jury solely on what would happen if the respondent were living freely in the community." *West*, 171 Wn.2d at 399 (citing *In re Detention of Post*, 170 Wn.2d 302, 312, 241 P.3d 1234 (2010)). The State was therefore permitted to point out deficiencies Snively's release plan, such as his lack of housing:

To be sure, the State may offer evidence of the treatment and placement conditions that are necessary to mitigate the respondent's dangerousness, and the State may offer evidence that these components are lacking in the respondent's proposed arrangements for unconditional release.

West 171 Wn.2d at 399 (citing *Post*, 170 Wn.2d at 313-14).

West approves of the very type of evidence that Snively claims is inadmissible. Snively's housing was a necessary "placement condition" and a "proposed arrangement for unconditional release." *Id.* Evidence

showing that he had given changing and conflicting answers about where he would live, and that he could not identify any housing at trial, was proof that a necessary component was “lacking in the respondent’s proposed arrangements for unconditional release.” *Id.*

Snively claims that RCW 71.09.060(1) prohibits admission of evidence that he lacked housing. Brief of Appellant at 18. He claims this interpretation is mandated by *In re Detention of Thorell*, 149 Wn.2d 724, 751, 72 P.3d 708 (2003). His argument fails to explain the history of the language in this statute and he misinterprets the Legislature’s intent. In 2001 the Legislature amended RCW 71.09.060(1) to add language excluding evidence of hypothetical release conditions.² Snively’s assertion that the amendment excludes evidence about actual release conditions turns the Legislature’s intent on its head.

In 2001, the Legislature addressed a controversy over whether SVP respondents facing initial commitment trials could introduce evidence about less restrictive alternatives (LRA) that the trial court had no

² RCW 71.09.060(1) provides, in pertinent part:

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

jurisdiction to order if the jury released the person. The controversy arose after publication of *In re Detention of Ross*, 102 Wn. App 108, 6 P.3d 625 (2000). In *Ross*, the alleged SVP, Casper Ross, sought to introduce evidence about hypothetical conditions in the community that would purportedly reduce his risk of reoffending. 102 Wn. App. at 111. Ross' expert, Dr. Brown, testified during an offer of proof that:

[I]f Ross were supervised under strict conditions, he would not be likely to engage in acts of sexual violence. Dr. Brown envisioned court ordered treatment with a community corrections officer or some other person with very tight supervision and monitoring or possibly a group home. And he would require that Ross (1) maintain full time employment with disclosure of his crimes and monitoring by the employer; (2) participate in two years of community-based sex offender treatment, with individual and group therapy and plethysmograph and polygraph monitoring; (3) fully disclose his sexual offender status to the community; and (4) attend two years of intensive alcohol and drug therapy that would include antiabuse monitoring and "UA's."

Id. at 112 (footnote omitted). The trial court excluded this evidence as confusing to the jury, because if Ross were released the trial court would have no jurisdiction to order placement conditions.³ *Id.* at 111. Ross was civilly committed as an SVP. *Id.* at 110.

Division II reversed and remanded for a new commitment trial. *Id.* at 120. The Court noted that the offer of proof alleged that Ross could be

³ Dr. Brown apparently testified about some of his alternative treatment opinions but Ross was not permitted to refer to that evidence in closing argument. 102 Wn. App. at 112 n.2.

effectively treated in the community with court supervision, but the jury heard only that Ross would need to voluntarily take part in treatment. *Id.* at 116-17. The Court held that the proffered evidence was central to the defense case and necessary to rebut the State's allegations. *Id.* at 116-17.

In response, the Legislature criticized the *Ross* opinion and clarified its intent:

The legislature finds that presentation of evidence related to conditions of a less restrictive alternative that are beyond the authority of the court to order, and that would not exist in the absence of a court order, reduces the public respect for the rule of law and for the authority of the courts. Consequently, the legislature finds that the decision in *In re the Detention of Casper Ross*, 102 Wn. App 108 (2000), is contrary to the legislature's intent. The legislature hereby clarifies that it intends, and has always intended, in any proceeding under this chapter that the court and jury be presented only with conditions that would exist or that the court would have the authority to order in the absence of a finding that the person is a sexually violent predator.

RCW 71.09.015. The Legislature then amended RCW 71.09.060(1) to include the following language:

In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition.

RCW 71.09.060(1) (in pertinent part). Far from excluding evidence about a person's actual release plan or lack thereof, the amendment was aimed

solely at preventing the type of hypothetical evidence that was permitted in *Ross*.

Amendment of RCW 71.09.060(1) did not immediately end the controversy. The Washington Supreme Court found that the amendment violated equal protection by not allowing consideration of LRAs at the initial commitment trial. *In re Detention of Brooks*, 145 Wn.2d 275, 292-93, 36 P.3d 1034 (2001). The *Brooks* Court held that evidence of LRAs was admissible at initial commitment trials. *Id.* However, because the trial court had no authority to order a less restrictive alternative at an initial commitment trial, the person had to be released if the fact-finder found that an LRA was appropriate. *Id.* Two years later the Supreme Court reversed itself and overruled *Brooks*. *In re Detention of Thorell*, 149 Wn.2d 724, 752-53, 72 P.3d 708 (2003). The Legislative directive that LRAs not be considered at initial commitment trials was found constitutional and RCW 71.09.060(1) continues to prohibit evidence of hypothetical release conditions at commitment trials. *Id.*

Snively's brief is silent about this history and, consequently, he misinterprets RCW 71.09.060(1). The Legislature never intended to exclude evidence about problems or concerns with a person's release plan, including housing, because that evidence is obviously relevant to risk.

Lastly, Snively's ER 403 argument violates the preservation of error doctrine. Brief of Appellant at 22-24. He did not raise an ER 403 objection in the trial court. *See* CP at 264-66; 10/14/13 RP at 73-75. This Court need not consider issues raised for the first time on appeal. RAP 2.5(a); *In re Detention of Williams*, 163 Wn. App. 89, 100, 264 P.3d 570 (2011). Litigants cannot remain silent at trial and then claim error on appeal. 163 Wn. App. at 100. Snively attempts to show he preserved this objection with a citation to a different argument. *See* Brief of Appellant at 22 (citing 10/14/13 RP at 90). His citation is to an argument on designations of Snively's videotaped deposition and the argument regards deleting testimony about a specific house that Snively had found but which fell through. That is insufficient to preserve an ER 403 argument as to his pretrial motion No. 14(a), where he never mentions or argues ER 403.

The evidence admitted by the trial court was relevant to Snively's risk and the court did not abuse its discretion. Snively's argument should be rejected and his commitment affirmed.

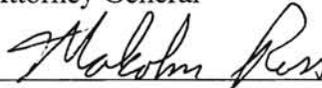
IV. CONCLUSION

For the foregoing reasons, the State requests that this Court affirm the trial court's order civilly committing Snively as a sexually violent predator.

RESPECTFULLY SUBMITTED this 27th day of August, 2014.

ROBERT W. FERGUSON

Attorney General



MALCOLM ROSS, WSBA #22883

Senior Counsel

APPENDIX 1

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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

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9

In re the Detention of:

NO. 03-2-07258-1

10

GARTH SNIVELY,

STIPULATION OF THE PARTIES
TO VIDEOTAPED DEPOSITION
TRANSCRIPT OF GARTH
SNIVELY

11

Respondent.

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13

Petitioner, State of Washington, by Senior Counsel Malcolm Ross, and Respondent, Garth Snively, by his counsel, Amy Kaestner and Jennifer McIntyre, hereby stipulate that the attached edited transcript is the true and correct record of the portions of Garth Snively's September 17, 2013 videotaped deposition that were played to the jury at the civil commitment trial that began on October 15, 2013, and shall be the official record of such testimony in the event of any appeal.

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DATED this 5th day of November, 2013.

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Stipulated to and approved for filing:

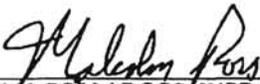
Stipulated to and approved for filing:

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ROBERT W. FERGUSON
Attorney General

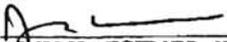
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STIPULATION OF THE PARTIES
TO VIDEOTAPED DEPOSITION
TRANSCRIPT OF GARTH SNIVELY

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
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291



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

In Re: The Detention of)
 GARTH SNIVELY,)
) No. 03-2-07258-1
)
 Respondent.)

VIDEO DEPOSITION UPON ORAL EXAMINATION OF GARTH SNIVELY

10:10 a.m.
Tuesday, September 17, 2013
Secure Community Transition Facility
McNeil Island, Washington

CLIP 1

Laurie B. Porter, CCR
Northwest Court Reporters
1415 Second Avenue, Suite 1107
Seattle, Washington 98101
(206) 623-6136
www.northwestcourtreporters.com

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Q. Mr. Snively, you suffer from pedophilia, don't you?
A. That's what I've been diagnosed with, yes.
Q. Do you accept that diagnosis?
A. I do.
Q. You are sexually aroused by contact with the genitals of
young boys?
A. I am.
Q. And you are sexually attracted to boys in the age range of 6
to 10 years old?

- 1 A. I am.
- 2 Q. You have had a victim as young as three years old; is that
3 right?
- 4 A. I have.
- 5 Q. And some who were over 10?
- 6 A. Some.
- 7 Q. But your preference is for boys age eight or nine years old;
8 is that right?
- 9 A. Correct.
- 10 Q. And you are particularly aroused by diaper activities and
11 urine?
- 12 A. Correct.
- 13 Q. If we look back to a point where your problem first started
14 showing itself, when you were about 11 years old in 1961 you
15 had a six-year-old boy take off his clothes for you and a
16 friend?
- 17 A. Yes.
- 18 Q. And about 1963, when you were 13 years old, you began
19 molesting children?
- 20 A. Yeah.
- 21 Q. You made yourself available to families in the neighborhood
22 as a babysitter; is that right?
- 23 A. Correct.
- 24 Q. And you molested some children that you were babysitting?
- 25 A. Correct.

- 1 Q. Do you recall molesting at least a couple of young children
2 in 1963?
- 3 A. I can't verify that date exactly, but yeah, that would be
4 about right.
- 5 Q. And you did this by fondling their genitals?
- 6 A. Yes.
- 7 Q. And you did the same to at least one child in 1964?
- 8 A. Yeah.
- 9 Q. Were there other children in 1964?
- 10 A. I don't recall. And I'd have to sit down and do some
11 figuring to give you exact dates, you know.
- 12 Q. What is your birth date?
- 13 A. My birthday is 11-3-49.
- 14 Q. And you are 63 years old as we sit here?
- 15 A. Correct.
- 16 Q. Do you recall fondling a nine-year-old boy down the street
17 when you were 16 years old?
- 18 A. Again, exact times and dates, no, but that would be about
19 right, yeah.
- 20 Q. When you were 20 in 1970, is that when you joined the Big
21 Brothers organization?
- 22 A. Approximately, yeah.
- 23 Q. And over the next five years until you took a hiatus from
24 the Big Brothers you had four or five children assigned to
25 you?

- 1 A. Yeah.
- 2 Q. Do you remember how many?
- 3 A. Again, I'd have to, to sit down and make a timeline to give
4 you exact numbers, but that's about right.
- 5 Q. Tell me if I'm correct in these names. You had Joe, Larry,
6 Joe-Joe, and Ed Perry; is that correct?
- 7 A. Yeah. Those names are all familiar.
- 8 Q. And they were all boys between the ages of seven and nine
9 years old?
- 10 A. Yeah.
- 11 Q. You fondled each one of them except for Ed Perry; is that
12 correct?
- 13 A. Correct.
- 14 Q. And later molested once a week for -- Larry, excuse me --
15 the boy Larry you molested about once a week for a year; is
16 that right?
- 17 A. It's approximately correct, yeah. Again, but, you know,
18 exact, exact time, timeline, I'd have to sit down and work
19 through that. It's been a number of years.
- 20 Q. But it's probably a fairly accurate --
- 21 A. It's reasonable.
- 22 Q. And that would be approximately 52 times that you molested
23 him?
- 24 A. Correct.
- 25 Q. You knew Larry about three or four years?

- 1 A. Yeah.
- 2 Q. Did he come from a single-parent household?
- 3 A. He did.
- 4 Q. Was he a vulnerable child?
- 5 A. Yeah. Yes.
- 6 Q. He was from a -- he had a mother, right?
- 7 A. Right.
- 8 Q. And he needed a father figure in his life?
- 9 A. Right.
- 10 Q. And with Joe-Joe, you fondled him also about once a week for
- 11 about a year?
- 12 A. Yeah.
- 13 Q. And again, he's from a single-mother family; is --
- 14 A. Right.
- 15 Q. -- that right?
- 16 And you would take Joe-Joe camping sometimes?
- 17 A. I don't recall if I took Joe-Joe camping or not, but that
- 18 would have been, been typical.
- 19 Q. And you also would bring him to your own home?
- 20 A. Correct.
- 21 Q. And you would spend some time with him at his home?
- 22 A. Some. Not a lot.
- 23 Q. Neither Joe-Joe nor Larry's mothers ever knew what happened
- 24 to them as far as you know, right?
- 25 A. Correct.

1 [REDACTED]

2 Q. Do you remember a boy, Michael, that you fondled when you

3 were 21 years old?

4 A. Yeah.

5 Q. And this happened about once a week for three years?

6 A. Yeah.

7 Q. Was that Michael Gollihar?

8 A. No.

9 Q. It was a different Michael?

10 A. Right.

11 Q. So that would be about 150 offenses against this other

12 Michael?

13 A. Gave or take a few, yeah.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. Now, the other Michael --

22 A. Right.

23 Q. -- not Michael Gollihar, was a boy that you met through Boy

24 Scouts?

25 A: Right.

- 1 Q. And you took him camping; isn't that right?
- 2 A. Right.
- 3 Q. Do you remember that a friend of his came along?
- 4 A. Occasionally.
- 5 Q. And isn't it true that you molested both Michael and his
- 6 friend on camping trips?
- 7 A. Yes.
- 8 Q. You temporarily left Big Brothers in 1975?
- 9 A. Yeah.
- 10 Q. Why did you leave them?
- 11 A. I'd moved out of the area.
- 12 Q. And then the next year, in 1976, you married Roberta; is
- 13 that right?
- 14 A. Right.
- 15 Q. And you were still married to her when she died in 2000?
- 16 A. Correct.
- 17 Q. And you were incarcerated then, weren't you?
- 18 A. Correct.
- 19 Q. She died from complications from diabetes; is that --
- 20 A. Correct.
- 21 Q. The last time that you lived with her was in early 1994?
- 22 A. Correct.
- 23 Q. That was right before you were convicted of --
- 24 A. Uh-huh.
- 25 Q. -- some crimes?

1 A. Yes.

2 Q. After you pled guilty to some crimes in 1993 you were out in
3 the community; is that right?

4 A. Correct.

5 Q. You never consummated your marriage with your wife?

6 A. No, did not.

7 Q. She wanted to, right?

8 A. Correct.

9 Q. And you had some counseling about that, didn't you?

10 A. Correct.

11 Q. And would you call this impotence counseling?

12 A. Yeah, I guess so.

13 Q. Psychological impotence counseling?

14 A. Yeah.

15 Q. And throughout your marriage you deceived your wife,
16 Roberta, as to the reason for your impotence, right?

17 A. Right.

18 Q. She never knew until you were arrested that you had been
19 molesting boys?

20 A. Correct.

21 Q. Now, you don't particularly like 13 and 14-year-old
22 children, do you?

23 A. No.

24 Q. They become -- in your words, they become teenagers and sort
25 of insolent?

- 1 A. Uh-huh.
- 2 Q. You have to say yes or no.
- 3 A. Yes.
- 4 Q. And you're not really impressed with that period of their
5 lives?
- 6 A. Correct.
- 7 Q. So if you were molesting a young child that grew older, that
8 young child would eventually grow out of your interest,
9 right?
- 10 A. Correct.
- 11 Q. In 1977 you rejoined the Big Brothers for about six months.
- 12 A. Right.
- 13 Q. And you were assigned a child named Cory?
- 14 A. Yeah.
- 15 Q. Cory was the child who told his mom that you had molested
16 him, right?
- 17 A. Correct.
- 18 Q. And then his mother told the Big Brothers organization?
- 19 A. Correct.
- 20 Q. And you were forced to quit Big Brothers?
- 21 A. Correct.
- 22 Q. And they insisted that you go through a treatment program,
23 and in exchange for that they would not report you to the
24 police. Is that what happened?
- 25 A. Yes.

- 1 Q. Do you believe that if you hadn't gone through the treatment
2 program, this would have been reported to the authorities?
3 A. I assume so.
4 Q. And you did attend treatment, didn't you?
5 A. I did.
6 Q. And that was Northwest Treatment --
7 A. Correct.
8 Q. -- Associates in Seattle?
9 A. Correct.
10 Q. That was from May 1977 to early 1979?
11 A. Correct.
12 Q. While you were in treatment you told them that you didn't
13 have any sexual interest in adult males, right?
14 A. Correct.
15 Q. Have you ever in your life had sexual contact with an adult?
16 A. No.
17 Q. You yourself were a Boy Scout, weren't you?
18 A. Right.
19 Q. And at age 18 you actually attained the rank of Eagle Scout,
20 didn't you?
21 A. Correct.
22 Q. And that's about 1968?
23 A. Correct.
24 Q. And as an adult you took part in the scouting program?
25 A. Correct.

- 1 Q. You were involved in both Cub Scouts and Boy Scouts?
- 2 A. Correct.
- 3 Q. Was that after your involvement with the Big Brothers?
- 4 A. No.
- 5 Q. Was it during?
- 6 A. During.
- 7 Q. And after?
- 8 A. Yeah.
- 9 Q. And you also joined a church?
- 10 A. Yes.
- 11 Q. The Arlington Free Methodist Church?
- 12 A. Correct.
- 13 Q. Now, in scouting you achieved some pretty responsible
- 14 positions in that organization, didn't you?
- 15 A. Yes.
- 16 Q. You were a Boy Scout commissioner?
- 17 A. Right.
- 18 Q. What is that?
- 19 A. A commissioner is someone who helps to facilitate the
- 20 program, provides support to the troops.
- 21 Q. You had been a Scout master before too; is that right?
- 22 A. I have.
- 23 Q. And have you started a Boy Scout den?
- 24 A. I did.
- 25 Q. Where was that?

- 1 A. That was in Everett.
- 2 Q. When did that happen, do you know?
- 3 A. Around 2000.
- 4 Q. It must have been before that. Weren't you incarcerated in
5 2000?
- 6 A. Oh, excuse me. You're right, yeah. It would have been in
7 1992, maybe. I was incarcerated in 94. You're right about
8 the time, yeah.
- 9 Q. And as to the church, there was an aspect of that that gave
10 you access to young children, wasn't there?
- 11 A. There was.
- 12 Q. And you also sometimes were a church camp counselor?
- 13 A. I was.
- 14 Q. And you went with some children to the Warm Beach camp?
- 15 A. I did.
- 16 Q. Where is that?
- 17 A. That's in -- south of Stanwood, Washington, Warm Beach.
- 18 Q. And these were week-long camping trips?
- 19 A. They were.
- 20 Q. With lots of children on them, right?
- 21 A. Yeah.
- 22 Q. And you were supervising the children?
- 23 A. I was.
- 24 Q. And you also sometimes volunteered for the church nursery,
25 didn't you?

- 1 A. I did.
- 2 Q. And there's children who were ages 2 and younger in the
3 nursery sometimes?
- 4 A. Usually, yeah.
- 5 Q. And they wear diapers?
- 6 A. Yes.
- 7 Q. Okay. After the Big Brothers, sometime in the early 1980s,
8 you sexually abused a child named Tom; is that right?
- 9 A. Yes.
- 10 Q. You were about 33 years old when that happened?
- 11 A. Uh-huh. Yes.
- 12 Q. And Tom was age eight or nine?
- 13 A. Yes.
- 14 Q. And Tom was the child of a friend of yours?
- 15 A. Right.
- 16 Q. And he also fit that pattern of a needy child who needed a
17 father figure?
- 18 A. Yes.
- 19 Q. And you also gained access to children that you were related
20 to by marriage; is that right?
- 21 A. Yes.
- 22 Q. At some point in the mid 1980s you began to target your
23 nephews, Jessie and Jason LeMay, for sexual contact?
- 24 A. Yes.
- 25 Q. They were about five and seven years old when you started?

1 A.. Yeah.

2 Q. And you fondled each of them about five to ten times?

3 A. Yes.

4 Q. You pled guilty to having sexual contact with both of those
5 LeMay boys, didn't you?

6 A. Yes.

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20 Q. Now, Roberta, your wife, did she work for the telephone
21 company?

22 A. She did.

23 Q. And her work frequently took her away from home, did it not?

24 A. It did.

25 Q. And you took advantage of your wife's absences from home

- 1 frequently to have children stay over?
- 2 A. I did.
- 3 Q. Do you remember a child named Joe in the later 1980s that
- 4 you diapered and masturbated in front of?
- 5 A. Not specifically.
- 6 Q. Does that sound like something that you would do?
- 7 A. It does.
- 8 Q. You sometimes masturbated in front of children?
- 9 A. Usually just Michael Gollihar.
- 10 Q. Were there some other children?
- 11 A. I believe there might have been one other that I had
- 12 masturbated in front of.
- 13 Q. You had a hot tub at your home in Everett; is that right?
- 14 A. I did.
- 15 Q. And you had lived in Arlington for a while; is that right?
- 16 A. Correct.
- 17 Q. For about 10 years?
- 18 A. Yes.
- 19 Q. And then you moved to Everett?
- 20 A. Right..
- 21 Q. Do you remember when you moved to Everett?
- 22 A. Not specifically.
- 23 Q. Was about 1992 or 91?
- 24 A. That would be approximately the right time.
- 25 Q. Do you remember this child Joe had a friend about age seven?

- 1 A. Yeah. Okay, I think I know who we're talking about. Yeah.
2 Yeah.
3 Q. And you also molested his friend?
4 A. Right.
5 Q. He spent the night at your house?
6 A. Yes.
7 Q. And Joe also had a little brother named Matt; is that right?
8 A. Right.
9 Q. And you molested Matt?
10 A. Once.
11 Q. Now, sometimes there were children that you were grooming
12 that you thought might tell on you; is that right?
13 A. Occasionally.
14 Q. And when I say "grooming," I'm talking about a process,
15 aren't I, about gradually getting a child used to sexual
16 contact with you?
17 A. Contact and trust.
18 Q. And in your case it was a very slow, elaborate process that
19 was well planned out?
20 A. It was.
21 Q. And this was, in part, so that the child wouldn't tell?
22 A. Correct.
23 Q. Did you ever say anything to try to keep a child from
24 telling?
25 A. No.

- 1 Q. Did you ask children not to tell?
- 2 A. No.
- 3 Q. You suggested sometimes, didn't you, that if someone found
4 out about what was happening, that that boy would be very
5 embarrassed?
- 6 A. I did once or twice, yes.
- 7 Q. And you said that in order to keep the child from telling;
8 is that right?
- 9 A. Right.
- 10 Q. This grooming process is also, in part, to ease the fears of
11 the people around the child who would otherwise protect that
12 child?
- 13 A. Yes.
- 14 Q. You were trying to portray yourself as trustworthy to that
15 child's parents, family, and friends; isn't that right?
- 16 A. Right.
- 17 Q. So they wouldn't suspect you with their child?
- 18 A. Right.
- 19 Q. And your belonging to organizations like Boy Scouts, Big
20 Brothers, and the church, were very useful things to you so
21 that people would think that you were trustworthy?
- 22 A. Correct.
- 23 Q. And there were also, weren't there, some children that you
24 began grooming and it turned out that you weren't attracted
25 to them for one reason or another?

- 1 A. There were.
- 2 Q. And there were some children that you began grooming where
3 events interfered where you could no longer have access to
4 that child?
- 5 A. Correct.
- 6 Q. Now, in about 1988 you began to groom Michael Gollihar; is
7 that right?
- 8 A. Correct.
- 9 Q. And you did this for about a five-year period with him,
10 didn't you?
- 11 A. Yeah.
- 12 Q. I think you've described this as a very intense
13 relationship. Correct?
- 14 A. It was. I was very emotionally involved in it, yes.
- 15 Q. You had met Michael Gollihar's parents at Bible study at
16 church?
- 17 A. Right.
- 18 Q. Now, they had a dying child, didn't they?
- 19 A. They did.
- 20 Q. He required 24-hour care in their home?
- 21 A. He did.
- 22 Q. And your molestation of Michael went on while this child was
23 in their home dying?
- 24 A. Yes.
- 25 Q. And your molestation of Michael was very intense and

- 1 frequent, wasn't it?
- 2 A. It was.
- 3 Q. There was one time even when you tried to get Michael to
- 4 fondle you?
- 5 A. Correct.
- 6 Q. You had asked him to diaper you; is that right?
- 7 A. Correct.
- 8 Q. And you asked him to sprinkle powder on your genitals?
- 9 A. Correct.
- 10 Q. And you did that. And then he didn't want to, but you had
- 11 him rub in the powder, right?
- 12 A. Right.
- 13 Q. And this went on both while you were living in Arlington and
- 14 when you were living in Everett?
- 15 A. Correct.
- 16 Q. And you molested him both before and after his brother
- 17 Dwayne died at the age of 18?
- 18 A. Correct.
- 19 Q. Michael initially suffered from enuresis, didn't he?
- 20 A. Enuresis?
- 21 Q. Enuresis.
- 22 A. Yes.
- 23 Q. What is enuresis?
- 24 A. Bedwetting.
- 25 Q. And you found that arousing, didn't you?

- 1 A. I did.
- 2 Q. And though, when he turned eight years old he didn't have
3 that problem anymore, did he?
- 4 A. Approximately eight, yeah, yeah.
- 5 Q. But you did something to ensure that he would continue to
6 urinate in his diaper or pants, right?
- 7 A. Right.
- 8 Q. What did you do?
- 9 A. I encouraged him to do that and also gave him fluids before
10 bed.
- 11 Q. What kind of fluids?
- 12 A. Coke, milk.
- 13 Q. And then did you encourage him to wear a diaper so that he
14 wouldn't wet the bed?
- 15 A. I did.
- 16 Q. And this was something you did not just with Michael,
17 correct?
- 18 A. Correct.
- 19 Q. You did it with a number of other children?
- 20 A. I did.
- 21 Q. You did it with children who didn't have bedwetting
22 problems, right?
- 23 A. I did.
- 24 Q. And you would give them a lot of fluids at night to ensure,
25 hopefully, that they would wet their diapers?

- 1 A. Right.
- 2 Q. You did that with the LeMay brothers?
- 3 A. I did.
- 4 Q. And then in the morning you would use that as a ruse to
5 check their diapers to see if they had wet them?
- 6 A. I did.
- 7 Q. And that would allow you to molest them?
- 8 A. Yes.
- 9 Q. Now, at your age of 22, wasn't that when you first came
10 across the idea of powdering as a means to fondle children's
11 genitals?
- 12 A. Approximately, yeah.
- 13 Q. Do you have any idea how many times you molested Michael
14 Gollihar over those five years?
- 15 A. No.
- 16 Q. It would have to have been hundreds of times, right?
- 17 A. It would.
- 18 Q. Eventually Michael stopped coming to your house, correct?
- 19 A. Correct.
- 20 Q. And you tried to get him to come over?
- 21 A. I did.
- 22 Q. You bought him a fire truck, didn't you?
- 23 A. I did. It was a Christmas present.
- 24 Q. Do you remember one morning you found that Michael had not
25 wet the bed when you had wanted him to?

- 1 A. I would imagine, yes.
- 2 Q. Do you remember that you yourself then urinated in the bed?
- 3 A. No.
- 4 Q. Okay. When you testified in 2006 do you recall answering
- 5 that you had urinated in the bed?
- 6 A. It wasn't in the morning. It was in the evening -- it was
- 7 during the night that that had happened. But yeah, you're
- 8 right. Yes, that did happen.
- 9 Q. So you did urinate --
- 10 A. Yeah.
- 11 Q. -- in the bed?
- 12 A. Once, yeah.
- 13 Q. While Michael was in it?
- 14 A. Right.
- 15 Q. Michael had a friend named Ty; is that right?
- 16 A. Ty? I don't recall, I don't recall if that was a name. But
- 17 Michael had some friends, yes.
- 18 Q. Okay. And you molested some of his friends too, didn't you?
- 19 A. I don't recall if I had molested any of them. I know there
- 20 was one of them, one of the people that came with him that I
- 21 had diapered, but I don't recall if that was -- if a
- 22 molestation was involved in that diapering or not.
- 23 Q. When Michael stopped wanting to come over to your house you
- 24 began having his nephews come over, right?
- 25 A. Yes.

- 1 Q. The names of his nephews were Adam Rybocki, correct?
- 2 A. Right.
- 3 Q. Jerry Brogan?
- 4 A. Right.
- 5 Q. And Matthew Cory?
- 6 A. Right.
- 7 Q. And you molested all of those children, didn't you?
- 8 A. I did.
- 9 Q. Do you know approximately how many times you molested each
- 10 of those boys?
- 11 A. Again, it would have been large numbers.
- 12 Q. These three boys, they were the sons of Lisa Rybocki; is
- 13 that right?
- 14 A. Two of them were sons, one was a stepson.
- 15 Q. And Lisa Rybocki was Michael Gollihar's sister; is that
- 16 right?
- 17 A. Correct.
- 18 Q. And this family was living in one house at one time?
- 19 A. Correct.
- 20 Q. In other words, they were living in the house of Michael's
- 21 mother?
- 22 A. Right.
- 23 Q. In other words, those boys that you molested would also have
- 24 been living in the house at the time that Dwayne was dying?
- 25 A. They would have been.

1 Q. And all of the children were also very needy to some extent,
2 weren't they?
3 A. They were.
4 Q. Now, do you remember a boy named T.J.?
5 A. T.J.? Yes.
6 Q. You met T.J. through the Cub Scouts at Briarwood?
7 A. I did.
8 Q. And you molested T.J.?
9 A. Once, yes.
10 Q. And did you have him touch your genitals?
11 A. No.
12 Q. Now, T.J. filed a civil suit against you?
13 A. He did.
14 Q. Against you and the Boy Scouts?
15 A. He did.
16 Q. And also the local chapter of the Boy Scouts?
17 A. Yeah. I don't know just who all else was involved. Scouts
18 were involved somehow.
19 Q. And you yourself settled your part of the suit, right?
20 A. I did.
21 Q. And you paid him some money?
22 A. I did.
23 Q. Do you remember how much that was?
24 A. Not right away I don't, no. I'd have to go look it up.
25 We're talking thousands of dollars.

- 1 Q. Was it about 15,000?
- 2 A. It could have been.
- 3 Q. And in exchange you were dismissed as a defendant?
- 4 A. I was.
- 5 Q. Now, in 1993 there was a boy named Cory who was age eight.
- 6 Do you remember him?
- 7 A. Right.
- 8 Q. You met him through Cub Scouts?
- 9 A. I did.
- 10 Q. And he was from a troubled home, wasn't he?
- 11 A. He was.
- 12 Q. And this is the boy who was with you when the police came to
- 13 question you about Michael Gollihar's allegations, right?
- 14 A. He was.
- 15 Q. So the police come to your home and this boy Cory is in your
- 16 house, right?
- 17 A. Right.
- 18 Q. And had you been diapering Cory?
- 19 A. I had.
- 20 Q. Had you molested him?
- 21 A. No.
- 22 Q. Do you think that you would have molested him?
- 23 A. I don't know if I would have. I guess I had suspicions that
- 24 he would tell if he was molested.
- 25 Q. And so you would not do it because you --

- 1 A. Right.
- 2 Q. -- were concerned about being caught?
- 3 A. Right, right.
- 4 Q. Cory had a friend named Jesse, also aged eight?
- 5 A. Yes.
- 6 Q. And Jesse would also spend time at your house?
- 7 A. He did once.
- 8 Q. And did you molest Jesse?
- 9 A. No.
- 10 Q. In between times that you would spend with your victims you
- 11 would masturbate thinking about them, right?
- 12 A. Right.
- 13 Q. And at one point up to three times a day?
- 14 A. Yeah, when I was younger.
- 15 Q. And it was very satisfying to you to masturbate to the
- 16 thoughts of these young boys?
- 17 A. It was.
- 18 Q. When Michael Gollihar finally disclosed that you had been
- 19 molesting him, you were charged with two counts of child
- 20 molestation in the first degree?
- 21 A. Correct.
- 22 Q. And count one of that offense was for your combined offenses
- 23 against Michael Gollihar?
- 24 A. Yes.
- 25 Q. And the other count was the combined offenses against Jerry

- 1 Brogan, Matthew Cory, Thaddeus Harrison, and Adam Rybocki?
- 2 A. Correct.
- 3 Q. After the police began investigating Michael Gollihar's
- 4 allegation, other victims turned up; is that right?
- 5 A. Correct.
- 6 Q. And that was when they discovered about your nephews, the
- 7 LeMay brothers?
- 8 A. Right.
- 9 Q. When you had the house in Everett you had a hot tub; is that
- 10 right?
- 11 A. I did.
- 12 Q. And you would sometimes get in the hot tub naked with boys?
- 13 A. I did.
- 14 Q. And didn't you masturbate with the boys in the hot tub?
- 15 A. With Michael.
- 16 Q. No one else?
- 17 A. Not that I recall.
- 18 Q. Now, while you were incarcerated in the Washington prison
- 19 system in the year 2000 you were interviewed by Dr. Savio
- 20 Chan; is that right?
- 21 A. Correct.
- 22 Q. And he was conducting an interview for Washington Department
- 23 of Corrections?
- 24 A. He did.
- 25 Q. And that was for a psychological evaluation of you?

1 A. Yes.

2 Q. And you told him that you had 100 victims; is that right?

3 A. Yes. But that victim count included, like, parents, other

4 people that I had, had used or had abused trust with in

5 order to reach the primary victims.

6 Q. You're aware, aren't you, that Dr. Chan wrote in his report

7 that you estimated over 100 victims, all boys between the

8 ages of 5 and 12?

9 A. I believe that's what he wrote down, yes.

10 Q. And in about December of 2001 to February of 2003 you

11 participated in the Department of Corrections sex offender

12 treatment program?

13 A. I did.

14 Q. And there you estimated that you had over 50 victims; is

15 that right?

16 A. Yes. And subsequently I have written an actual list of

17 everybody I can recall, and I believe it is 37 or 39 actual

18 victims that I can name.

19 Q. Mr. Snively, when you were in the community would you agree

20 that because of your pedophilia you had serious difficulty

21 controlling your behavior?

22 A. At that time, yes.

23

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03 2,07258-1

Deit's } Exhibit No. 30

Marked for Identification

Admitted Nancy Alvert Rejected
Deputy Clerk



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

In Re: The Detention of)
 GARTH SNIVELY,)
) No. 03-2-07258-1
)
 Respondent.)

VIDEO DEPOSITION UPON ORAL EXAMINATION OF GARTH SNIVELY

10:10 a.m.
Tuesday, September 17, 2013
Secure Community Transition Facility
McNeil Island, Washington

CLIP 2

Laurie B. Porter, CCR
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Q. You worked at Boeing from 1979 until you were fired after
your arrest in 1993?

A. I did.

1 Q. Tell me about the positions that you held at Boeing over
2 those years and what you did for them.

3 A. I started out as a electronics technician, testing wire,
4 wiring for the airplane to make sure that it was assembled
5 correctly.

6 Subsequently I went to a position where I helped
7 develop and oversee a project for automated testing of the
8 airplane, where we'd hook a computer to the airplane to test
9 the wiring.

10 Subsequent to that I went to a black program and
11 worked with the software engineers for quality assurance of
12 their software they were writing.

13 And subsequent to that I came back to the Everett
14 plant and worked in computer support.

15 Q. What did you do in computer support?

16 A. In computer support I coordinated changes to software,
17 represented the Everett division as to what changes were
18 important to Everett in a group called the Change Committee,
19 coordinated trouble reports.

20 Q. What year did you begin working in computer support?

21 A. I can't recall an exact date for that at all.

22 Q. Do you know approximately how many years you worked in that
23 department?

24 A. At least five, maybe more.

25 Q. Was that until you left Boeing?

1 A. It was.

2 Q. In 2009 you had your own computer at the SCC?

3 A. I did.

4 Q. For how long had you had that computer?

5 A. Four years or five years.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. Who searched your computer in 2009?

10 A. Initially there was a search conducted here at SCC.

11 Subsequently the computer was given to the U.S. Postal

12 Service.

13 Q. And did they also do a search?

14 A. They did.

15 Q. What did the SCC find on your computer?

16 A. SCC found some erotica called The Colony, which is pictures

17 of mostly boys -- I don't recall if there were any girls in

18 that or not -- at a nudist colony in Europe.

19 Q. And what is erotica?

20 A. Erotica is nonsexual explicit naked pictures.

21 Q. Is that what these were?

22 A. That's what this was, yes.

23 Q. How did it get on your computer?

24 A. I placed it there. I had been encouraged by another

25 resident. He wanted some copies of some of those pictures

1 put on a disk that he could watch on his DVD player.

2 And one of my problems, I guess you'd call it, one of
3 my risk areas is what's called social rejection and
4 loneliness, which makes me vulnerable to being convinced to
5 do things to help other people to gain friendship.

6 And I was -- I subsequently had become involved with
7 him and put those pictures on my computer to make those
8 disks for him.

9 Q. Why did you have to put it on your computer in order to put
10 it on disks?

11 A. Because I could copy all of them at once, or I could select
12 the pictures he wanted by putting them on my computer and
13 then he could see them and I could select each picture that
14 he wanted. He didn't want all of them.

15 Q. And that was certainly against the rules, wasn't it?

16 A. Absolutely.

17 Q. And you knew that?

18 A. I did.

19 Q. And why did you leave it on your computer?

20 A. That was a mistake.

21 Q. What do you mean "a mistake"?

22 A. Well, moving the pictures, you drag and drop. I don't know
23 if you're familiar with that process. But you select what
24 you want to move and you put your curser over to where you
25 want the pictures to go.

1 And I had put them over a place I didn't recognize or
2 didn't know I was going to put them on, and I got a copy
3 error. And I thought it was something I'd done wrong, so I
4 recopied them.

5 And because of that, I ended up with a set of pictures
6 that I knew where they were and there was a set of pictures
7 that had been dropped somewhere where I didn't know where
8 they were. I didn't erase the ones I didn't know about.
9 The other ones had been erased.

10 Q. When did you begin doing this, putting these pictures on
11 your computer?

12 A. I'd been doing it for maybe six months or a year.

13 Q. And when was that?

14 A. About a year before they were discovered. I can't remember
15 what that date was. 09, I believe.

16 Q. So for --

17 A. So in 08 sometime. So six months to a year that he had
18 gotten different pictures in that he wanted copied.

19 Q. So for a year these pictures were on your computer?

20 A. I don't know how long that particular set of pictures had
21 been on there, but it could have been up to a year.

22 Q. And you were unaware of that?

23 A. I was. They were in a file that I wouldn't have recognized
24 that there should have been any pictures in.

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Q. Your computer was taken away from you for a while after that, right?

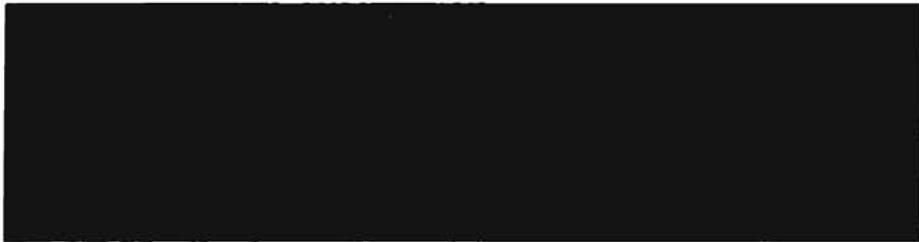
A. It has been in the possession of SCC or in a storage locker since then. I've not had a computer back.

Q. You also had -- in 2009 they found some contraband computer programs, correct?

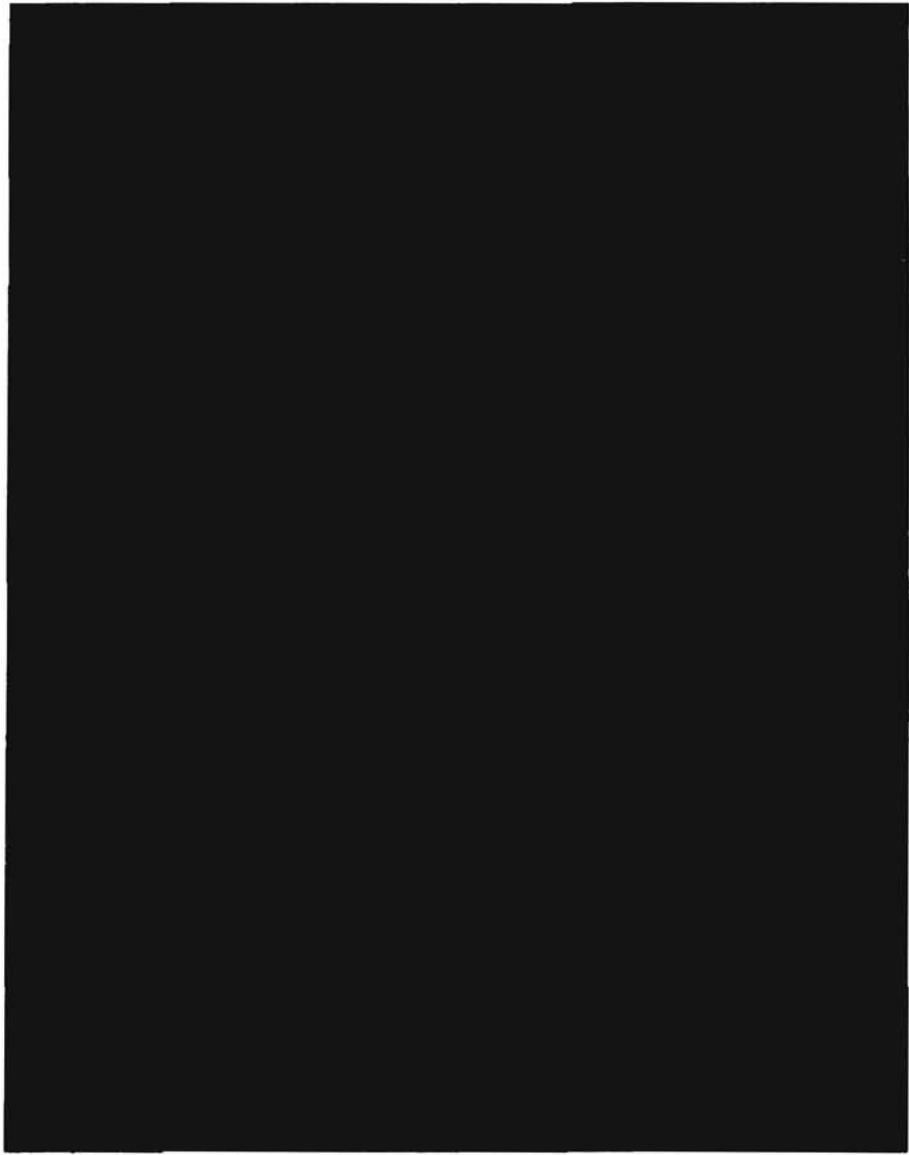
A. Yes. At least SCC claimed they were contraband after I had gotten them.

Q. You had a program called ISOBuster?

A. ISOBuster, yes. It's a program that allows you to open a corrupt CD. I had been using it to open some of my music CDs that had been corrupted.



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But we had gotten -- originally at SCC we were allowed

1 to get free disks that came with PC Magazine. And those
2 disks had lots of programs, some of which I never, never
3 used. I put them on my computer when I copied the disk
4 because the disk came around to copy.

5 Q. So you put a bunch of programs on your computer?

6 A. I did.

7 Q. And you don't know what they were?

8 A. No. You'd have to open each program up and look at it to
9 find out what each one was.

10 Like I said, these were disks that somebody else got
11 in the mail, and they were passed around throughout the
12 institution.

13 Q. Is that where ISOBuster came from?

14 A. It is. It came from off of a free program off of one of the
15 PC Magazine disks.

16

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19 Q. What about Norton Ghost?

20 A. Norton Ghost is one I had, which I had been given permission
21 to buy. It came as part of a Norton disk that had repair
22 software and recovery software.

23 Q. What can Norton Ghost do?

24 A. Norton Ghost is a program that makes backup copies of your
25 computer to prevent data loss. When you change a program,

- 1 it automatically writes it into a separate directory.
- 2 Q. Did you use that?
- 3 A. Yes, I did.
- 4 Q. You had a program called Virtual Drive?
- 5 A. I did.
- 6 Q. Where did you get that?
- 7 A. I was given permission to buy that. Virtual Drive allows
- 8 you to make what appear to be CDs on your computer hard
- 9 drive so that you can download your CD to the computer and
- 10 run games while you're -- without actually having the CD in
- 11 your computer.
- 12 Q. And you had a program called JW Offline?
- 13 A. I don't recognize that, but that would have been another of
- 14 those programs that had been on one of those sample disks.
- 15 Q. And you had a program called Diskeeper?
- 16 A. Diskeeper, yes.
- 17 Q. What did that do?
- 18 A. Diskeeper is a program that you set up to run automatically,
- 19 and it compresses your disks and corrects corruption.
- 20 Q. And you also had a program called Eraser?
- 21 A. Yeah, I think so. I don't know if that's what it was
- 22 called, but it was a program that would erase your disks so
- 23 that you can reformat your disk and reload your software
- 24 when it became corrupt.
- 25 Q. And you could delete files so that they couldn't be -- there

1 was no trace of them, right?

2 A. I assume they would have done that. That's the kind of a
3 program it was. It was something that completely would
4 delete things off your computer, yes.

5 Q. All of these programs I named were prohibited, weren't they?

6 A. Subsequent to there having arrived in the institution I
7 believe they came prohibited, yes.

8 Q. And you knew they were prohibited, didn't you?

9 A. Not all of them. I had no -- for instance, Diskeeper. I
10 had no reason to believe Diskeeper was prohibited and I had
11 not seen a list that said it was.

12 There were a number of other programs that it was the
13 same, same situation.

14 Q. What programs?

15 A. The Norton Ghost, for instance. All of the Norton programs,
16 I had no, no idea that they had been prohibited. They were
17 just utility programs for keeping your computer running
18 efficiently.

19 I believe that I knew that Eraser had been prohibited.
20 They had decided that that was not an approved program.

21 Q. Why did you load it on your computer?

22 A. It was also loaded at that time:

23 Q. Didn't you get into a similar kind of problem at the
24 institution in 2005?

25 A. I don't recall this incident.

03 2 07258 1

Case No. _____

Plff's }
Def't's } Exhibit No. 31

Marked for Identification

Admitted _____ Rejected _____
Nancy Albert Deputy Clerk



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

In Re: The Detention of)
 GARTH SNIVELY,)
) No. 03-2-07258-1
)
 Respondent.)

VIDEO DEPOSITION UPON ORAL EXAMINATION OF GARTH SNIVELY

10:10 a.m.
Tuesday, September 17, 2013
Secure Community Transition Facility
McNeil Island, Washington

CLIP 3

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Q. What have been your treatment goals for the last several years?

A. My treatment goal was to understand why and how I was motivated to do the things I did; how to develop an intervention plan that would allow me to control that and not do it subsequently, do it again; to develop an intervention plan that would allow me to be reasonably safe in the community.

Q. What is "arousal reconditioning"?

A. Arousal reconditioning is a process where you are trained to

1 be aroused to some other stimulus besides the one you are.

2 Q. Have you done any of that?

3 A. I have not had an opportunity to do that. It's not provided
4 at SCC. And I have not had an opportunity to engage a
5 private practitioner to provide that at this point.

6 Q. You're working with Dr. Hawkins?

7 A. I am.

8 Q. Does he provide that?

9 A. No, he does not.

10 Q. You've done some work on trying to figure out what your
11 sexual outlet will be if you're released?

12 A. Yes.

13 Q. What will it be?

14 A. At this point I have no outlet. I can't go back to the
15 outlet I had.

16 Q. Meaning diapers and urine?

17 A. Diapers and children and urine, yeah.

18 And I am not -- I'm very comfortable with homosexuals.
19 I'm even interested somewhat in it. But I'm not physically
20 stimulated and aroused at this point to contact. I've never
21 had that contact. So I have no, no fall-back pattern.

22 That's where the question of the arousal reassignment
23 comes in, is that there's a possibility that when I have the
24 ability to go hire a private practitioner, that I can
25 participate in that and become comfortable and aroused to

1 adult males.

2 Q. Do you think that's possible?

3 A. I would like to think so. I don't know for sure if it is.
4 I've never done it.

5 There are mixed reports about whether arousal
6 reconditioning is effective. I've heard recently that, for
7 instance, trying to recondition minors has been outlawed in
8 California. I guess that, in the back of my mind, would
9 raise questions about the validity of reconditioning, but I
10 still would like to try it and see whether it works.

11 Q. Do you remember what your plan was at the time of trial in
12 2006?

13 A. Yes. I was interested in being able to participate in
14 diapering with other adults..

15 Q. What came of that plan?

16 A. That plan is not very feasible. One of which is, is that
17 I'm out of the age range where a lot of people would
18 participate in that. That's kind of a young guy's thing,
19 apparently, from what I've been able to learn. I'm no
20 longer a young guy.

21 More importantly than that, I have subsequently come
22 to believe that, that because of the association between
23 diapering and my original victims, the children, that it
24 wouldn't be a good idea to participate in diapering.

25 There may be bleed-over or cross-over that would cause

1 me to subsequently become aroused to thoughts of the
2 children or things that I have done in the past and lead me
3 back to offending. So it's not a practical idea. It's not
4 part of my relapse prevention to be able to do that.

5 Q. If you were released by the jury where would you live?

6 A. Currently I have an agreement with a gentleman in Shelton to
7 rent me a house that he has. [REDACTED]

8

9 Subsequently I would like to buy a house or a piece of
10 property and put a house on it in Centralia, where my mother
11 lives. She has gotten physically feeble and could use the
12 support, have somebody around to help her.

13 Q. What is the agreement that you've made? What's the terms of
14 the agreement you've made to rent a house?

15 A. I have not actually signed an agreement at this point. I've
16 been told that paperwork is in the process of that and that
17 it will be \$500-a-month rent.

18 Q. And is the house within the city of Shelton?

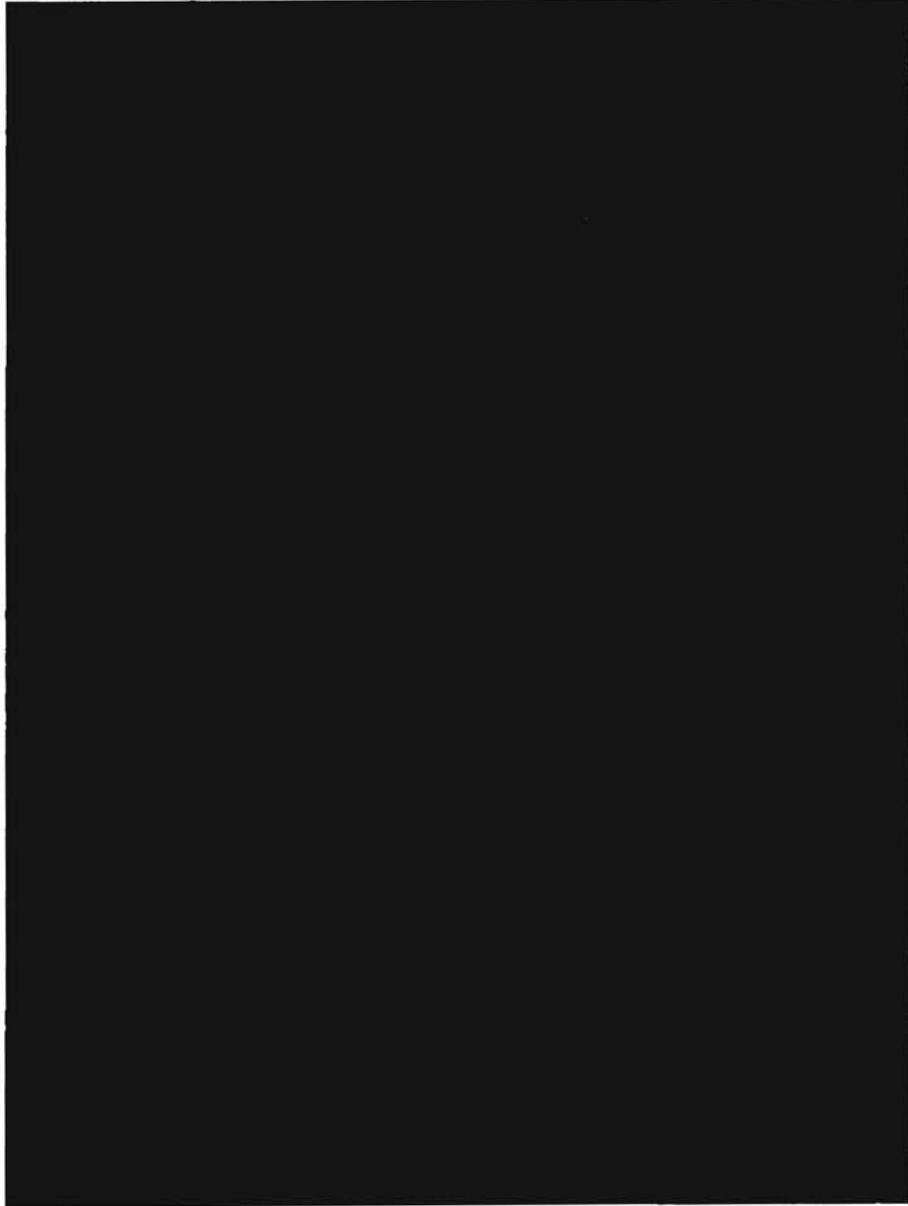
19 A. I actually don't know. I've not seen the house. It's, it's
20 in very -- if it's not actually inside the city limits, it's
21 extremely close to being in the limits. I believe the
22 addresses is 1110 West Highway 3, Shelton.

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Q. Are you planning on working if you're released?

A. I plan on being retired.

Q. Did you have an idea about raising guinea pigs at one time?

A. I do, more for myself than for anything else. Guinea pigs, rabbits, and chickens, if I could.



Q. Do you have any concerns about guinea pigs being very attractive to children?

A. Actually, no, I haven't. Because guinea pigs would be in a guinea pig corral or a pen. I wouldn't have them where people could be seeing them.

I guess, now that you mention it, they could be used as a lure. And I probably will need to reconsider whether

- 1 or not a guinea pig would be a good idea.
- 2 That also would apply to rabbits, I guess.
- 3 Q. Did someone here on the senior clinical team some time ago
- 4 already point out to you guinea pigs would be problematic
- 5 because of the children being attracted to them?
- 6 A. I don't recall hearing that.
- 7 Q. Would you take part in sexual deviancy treatment if you were
- 8 released?
- 9 A. I expect to.
- 10 Q. Who would that be with?
- 11 A. At this point it would be with Dr. Hawkins. I would
- 12 continue with him.
- 13 Q. How long do you intend to participate in that treatment?
- 14 A. Until Dr. Hawkins tells me that he thinks that we have
- 15 reached the maximum benefit from that.
- 16 Also, like I said, I would like to find someone where
- 17 I could participate in reassignment, arousal reassignment.
- 18 Q. And that would be basically turning yourself into a
- 19 homosexual man?
- 20 A. That was the idea, was to look into that, yes.
- 21 Q. What is a support network?
- 22 A. A support network are the people that you can call on to
- 23 help you stay stable in the community, to provide assistance
- 24 if you need it, somebody that you know that can watch
- 25 whether or not you're demonstrating signs of relapse.

- 1 Q. Why is it important to have a support network?
- 2 A. Again, it provides stability. It gives you somebody that
3 can look at saying, you know: You're not fulfilling your
4 obligations, or you're not -- or you are, I should say,
5 demonstrating some kind of a sign of relapse.
- 6 There are a number of psychological signs or
7 behavioral signs that each of us have become aware of that
8 would indicate relapse.
- 9 Q. What will be your support network if you are released?
- 10 A. Currently the support network I have is my therapist and the
11 people in my group, my mother, my brother. I have a cousin
12 in Olympia and a cousin in Portland.
- 13 Q. These are all people who have signed on to being your
14 support network?
- 15 A. These are all people that I have talked it and/or my brother
16 has talked to who are aware of the fact that I'm going to
17 need support and have to have people to talk to and people
18 that can help me.
- 19 Q. Have you talked to them?
- 20 A. Not all of them. I've not talked to my cousin in Olympia
21 yet.
- 22 Q. Who have you talked to?
- 23 A. I've talked to my cousin in Portland.
- 24 Q. Who's that?
- 25 A. Sherry.

- 1 I've talked to my brother.
- 2 Q. And how is Sherry going to be part of your support network?
- 3 A. She's there to talk to if I need to talk to somebody. We
- 4 expect to be seeing each other probably once a month. For
- 5 now it would be up here somewhere. Upon complete release I
- 6 would be able to go to Portland and visit with her. Right
- 7 now I'm limited to staying inside the state.
- 8 Q. What's your brother's name?
- 9 A. Kevin.
- 10 Q. Kevin Snively?
- 11 A. Uh-huh.
- 12 Q. You have to say yes or no.
- 13 A. Yes, Kevin Snively.
- 14 Q. And what does Kevin Snively do for a living?
- 15 A. Kevin works as a ... engineer, a plant engineer at Swedish
- 16 Medical.
- 17 Q. Does he have any side businesses?
- 18 A. I don't believe so at this time. At one time he was raising
- 19 carnivorous plants, but I don't know as he's still doing
- 20 that.
- 21 Q. What's a carnivorous plant?
- 22 A. That is a plant that catches bugs as part of their
- 23 nutrition, things like Venus flytraps, Pitcher plants,
- 24 things of that nature.
- 25 Q. Did he grow anything else?

- 1 A. He currently is growing medical marijuana. He has been
2 prescribed medical marijuana by his physician as part of a
3 treatment for asthma and for arthritis. From what he's told
4 me about it, I believe he distills it and uses the oils as
5 an ointment.
- 6 Q. You had had a wish to go out and visit with him at one time.
- 7 A. I do. I still do.
- 8 Q. And was a site visit done?
- 9 A. There was.
- 10 Q. What's a site visit?
- 11 A. A site visit is where SCC sends staff out to review a
12 business or a house to see if it's suitable for you to visit
13 as a resident.
- 14 Q. Was his house approved for you to visit?
- 15 A. His house was disapproved, contrary to what he had led me to
16 believe. There was trace amounts of medical marijuana
17 laying around in his house, crumbs on his counter and other
18 things from where he had been processing his drug.
- 19 Q. Did you inform the people here that he was growing marijuana
20 at his house?
- 21 A. I did not. It was prescribed. It didn't occur to me that
22 his having a license to grow his own medicine was a problem.
- 23 Like I said, subsequently I found out that it's, it's
24 not just his plant that he's growing, it's -- there are
25 trace amounts all over the house because of his processing

- 1 the product to distill it.
- 2 Q. You had said you had been led to believe something else. Is
3 that right?
- 4 A. I had. I knew he was growing it. And at one time he said:
5 Don't have them come out and inspect the house, because I
6 have marijuana hanging in one of the rooms drying at this
7 time.
- 8 He says: Let us clean everything up first.
- 9 He had told me it was all cleaned up and everything
10 was at a point where he thought that he could pass an
11 inspection and had said: Now would be the proper time to
12 have them come look, because we've got it all under control.
- 13 Q. So did you --
- 14 A. Quite obviously it wasn't.
- 15 Q. And you waited for a while?
- 16 A. I did. I knew that he had had -- like I said, he had had
17 product hanging in a room drying and ...
- 18 Q. Where does he live?
- 19 A. He lives in Everett.
- 20 Q. And then who else do you have in your support network?
- 21 A. I've had a cousin that has expressed to my brother that he
22 wants to be part of my contacts and supports. And he lives
23 in Olympia out towards Black Lake.
- 24 Q. What's his name?
- 25 A. Steve Smith.

1 Q. Have you talked to him?

2 A. I have not. I don't have contact currently.

3 And like I said, he told my brother that after I was
4 released that he wanted to be involved.



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Case No. _____
Plff's } Exhibit No. 32
Def't's }

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Admitted NO Rejected
Nancy Albert Deputy Clerk

NO. 71116-4

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

In re the Detention of:

GARTH SNIVELY,

Appellant.

DECLARATION OF
SERVICE

I, Joslyn Wallenborn, declare as follows:

On August 27, 2014, I sent via electronic mail and United States mail a true and correct copy of Respondent's Brief and Declaration of Service, postage affixed, addressed as follows:

Whitney Rivera
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98102

wapofficemail@washapp.org
whitney@washapp.org

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

DATED this 27th day of August, 2014, at Seattle, Washington.


JOSLYN WALLENBORN

2014 AUG 27 PM 3:34
STATE OF WASHINGTON
COURT OF APPEALS DIV I