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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY
CITY

33644-8-II

STATE OF WASHINGTON
RESPONDENT

VS.

MICHELLE KNOTEK,
APPELLANT

APPEAL FROM PACIFIC COUNTY SUPERIOR COURT
HONORABLE F. MARK MCCAULEY, JUDGE

BRIEF OF RESPONDENT

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A.

STATE'S RESPONSE TO DEFENDANT'S
ASSIGNMENT OF ERROR

The guilty pleas of the defendant, Michelle Knotek, are not invalid under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Ms. Knotek's pleas were knowing, voluntary, and intelligent. She knew the direct consequences of her pleas. Ms. Knotek was not misadvised about the maximum sentence that could be imposed or the requisite term of community placement/community custody that she was facing upon release from custody.

B.

STATEMENT OF THE CASE

The defendant, Michelle Knotek, pled guilty on June 18, 2004, to one count of Murder in the Second Degree (the victim was Kathy Loreno) which occurred in 1991. Ms. Knotek also pled guilty on June 18, 2004, to one count of Manslaughter in the First Degree (the victim was Ronald Woodworth) that occurred between October 2001 and August of 2003. (RP 6-18-04, 20-21,

27). The facts surrounding these deaths were horrific. See Appendix A, which contains the State's sentencing memorandum.

Ms. Knotek's STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE listed life imprisonment as the maximum term that Ms. Knotek faced for each count. This STATEMENT also listed the community placement time and the community custody time to which Ms. Knotek would be subject upon release from custody. See Appendix B, STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE.

On June 24, 2004, the United State Supreme Court decided Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004) which limited the discretion that sentencing courts have on imposing exceptional sentences.

Ms. Knotek's attorneys acknowledged that their client was better off under the Blakely decision because the threat of an exceptional sentence had been eviscerated. See Appendix C, SUPPLEMENTAL SENTENCING MEMORANDUM dated July 19, 2004. Judge McCauley sentenced the defendant to 266

months (the top end of the combined standard ranges) on August 19, 2004. (RP 8-19-06, 34). But for the Blakely decision, Judge McCauley would have given Ms. Knotek an exceptional sentence. See Appendix D.

C.

ARGUMENT

THE DEFENDANT'S RIGHT TO DUE PROCESS WAS NOT VIOLATED; THE DEFENDANT WAS PROPERLY ADVISED OF THE DIRECT CONSEQUENCES OF HER GUILTY PLEAS AND HER PLEAS WERE ENTERED KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

1. Ms. Knotek has not shown that her right to due process was violated.

A defendant may withdraw her guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. In the Matter of the Personal Restraint Petition of Isadore, 151 Wash. 2d 294, 297-298, 88 P. 3d 390 (2004). Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. Id. at 297. A defendant need not be informed of every potential consequence of her plea, but she must be informed of all direct consequences. State v. Ross, 129 Wash. 2d 279, 284, 916 P.2d 405 (1996).

Mandatory community placement is a direct consequence of a guilty plea. State v. Turley, 149 Wash. 2d 395, 399, 69 P.3d 338 (2003).

In this case, the defendant was apprised of the direct consequences of her plea. Unlike Isadore, Ross, and Turley, the defendant was aware that community placement and community custody were concomitant consequences of her guilty pleas. The defendant also was apprised of the statutory maximum sentence that she could face. See State v. Vensel, 88 Wash. 2d 552, 555, 564 P.2d 326 (1977). Since Blakely v. Washington, 542 U.S. 124 S. Ct. 2531, 159 L. Ed. 2d 183 (2004) was handed down after Ms. Knotek entered her guilty pleas, Ms. Knotek received the benefit of this serendipitous decision. Ms. Knotek was properly apprised of the risks she faced when she entered into the plea bargain offered by the State.

Consequently, while Ms. Knotek correctly cites the legal principles enunciated in Isadore, Ross, and Turley, the facts in the present case do not cut in the defendant's favor. No direct consequences of the defendant's pleas were hidden from her. The defendant's pleas were not invalidly entered and a

manifest injustice is not present. Cf. In the Matter of the Personal Restraint Petition of Matthews, 128 Wash. App. 267, 115 P. 3d 1043 (2005). In essence, the defendant's brief embodies sophisticated legerdemain. Her due process argument fails.

2. Ms. Knotek was informed of the maximum penalties she faced; she was not misadvised regarding the proper range of community custody.

The defendant pled guilty to Murder in the Second Degree (the victim was Kathy Loreno) which occurred between January 1, 1991 and December 31, 1991. The defendant also pled to Manslaughter in the First Degree (the victim was Ronald Woodworth) that occurred between October 1, 2001 and August 9, 2003. The defendant contends that she was not properly advised of the community range that she was facing. The defendant asserts that her plea was not made knowingly and voluntarily because Count I (Murder in the Second Degree) had no community custody range since the crime was committed in 1991.

This argument is without merit. The STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE that was entered into the court record at the time Ms. Knotek pled guilty contains language that pertains to community custody and community placement. See Appendix B. In this instance, the defendant was subject to community placement for Count I (Murder in the Second Degree). See former RCW 9.94A.120(8)(b). Specifically, this statute states that:

. . . the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

Ms. Knotek refers to paragraph 6(a) of her plea statement and erroneously asserts that she was informed that she would be faced with 24 months of community custody for the murder conviction. Paragraph 6(a) specifically makes reference to community placement for Count I (the murder charge) -- not community custody. Moreover, paragraph 6(a) contains this language:

COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after

July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f)).

Consequently, paragraph 6(a) sends one to paragraph 6(f) to determine the community placement obligation for crimes committed before July 1, 2000. The relevant portion of paragraph 6(f) reads as follows:

For crimes committed prior to July 1, 2000:
In addition to sentencing me to confinement, the judge will order me to serve 24 months of community placement or up to the period of earned early release, whichever is longer. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

By reading the above paragraph, the defendant knew that for Count I (Murder in the Second Degree) she would have to serve 24 months of community placement or up to the period of earned early release, whichever is longer. While paragraph 6(a) does not contain language pertaining to the period of earned early release, this oversight is de minimus.¹

¹ Under former RCW 9.94A.150(1), the defendant's aggregate earned early release time may not exceed 15 percent of the sentence. Since the top end of the standard range for Count I (Murder in the Second Degree) is 164 months, the theoretical maximum of earned early release time is .15 times 164 which equals 24.6 months. Consequently, calculating potential earned early release time does not meaningfully change the amount of community placement to which the defendant might be subject.

Moreover, on its face, paragraph 6(a) sends one to paragraph 6(f) for crimes committed before July 1, 2000. Hence, since Count I (Murder in the Second Degree) occurred in 1991, there is no ambiguity within this plea document concerning the amount of community placement that would be associated with Count I (Murder in the Second Degree).

Simply put, the plea document does not state that the defendant faced community custody as a result of the plea to Count I (Murder in the Second Degree). The defendant's contention on this point is just plain wrong. She was properly advised of the community placement component of her sentence.

Likewise, the defendant makes no headway in asserting that the plea document was deficient because it did not explicitly state whether the community placement for Count I (Murder in the Second Degree) and the community custody for Count II (Manslaughter in the First Degree) would run consecutively or concurrently. Paragraph 6(a) states; "sentences to run consecutively." This phrase tracks the language in RCW 9.94A.589(1)(b) and former RCW

9.94A.400(1)(b). Since this language is unambiguous, it cannot be said that the defendant reasonably misunderstood the consequences of her pleas. Because the defendant was properly advised of the direct consequences of her pleas, her argument fails.

3. Ms. Knotek was not misadvised of the maximum prison time she faced.

Ms. Knotek argues that Blakely v. Washington, 542 U.S. 296, 159, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) changed the maximum sentence that can be imposed for a Class A felony. Under RCW 9A.20.021(1)(a) the statutory maximum for a Class A felony is life imprisonment. Blakely did not vitiate this statute. Blakely simply stands for the proposition that a trier of fact must find facts supporting an exceptional sentence in excess of the standard sentencing range, or such facts must be admitted by a defendant, before a sentencing judge can impose a sentence in excess of the standard range. In other words, a life sentence is possible with a Class A felony only if the trier of fact specifically makes factual findings which would support a life sentence, or if the defendant admits such

facts. Without such factual findings, the effective maximum becomes the top end of the standard range, which in this case is 266 months.²

Nevertheless, in situations where Blakely applies, the “effective” maximum sentence (which is the top end of the standard range) does not change the fact that a “theoretical” maximum sentence still exists, which is life imprisonment for a Class A felony. Blakely does not purport to declare unconstitutional RCW 9A.20.021(1)(a); it merely limits the situations in which a life sentence can be imposed.

In this case, the colloquy that took place when the defendant entered her pleas of guilty shows that she was apprised of the maximum possible penalty for a Class A felony. If Ms. Knotek had not been apprised of the fact that life imprisonment was a theoretical possibility, she would not have known that she potentially faced a life sentence if she proceeded to trial and were found guilty of a Class A felony.

² The top end of the standard range for Count I (Murder in the Second Degree) and Count II (Manslaughter in the First Degree) is 164 and 102 months, respectively. Since both of these crimes are serious violent offenses, the prison time on both counts runs consecutively, which produces a total standard range of 266 months for both counts. See RCW 9.94A.400(1)(b) which was in place when Count I (Murder in the Second Degree) was committed and RCW 9.94A.589(1)(b) which was in place when Count II (Manslaughter in the First Degree) was committed.

Of course, under Blakely, a life sentence would not be possible unless a trier of fact made specific factual findings which would justify an exceptional sentence, but it is clear that Ms. Knotek would have faced that possibility if she had not chosen to accept the State's plea bargain.³

Moreover, apprising the defendant that a Class A felony carried a maximum life sentence is not a misstatement of the law. Blakely did not repeal RCW 9A.20.021(1)(a). If the defendant were not apprised of the theoretical maximum sentence, it could be argued that her rights were violated. Cf. State v. Morley, 134 Wash. 2d 588, 621, 952 P.2d 167 (1998). ("The trial court is required to correctly inform a defendant who pleads guilty as to the maximum sentence on the charge . . .") Ms. Knotek cites State v. Walsh, 143 Wash. 2d 1, 8-9, 17 P.3d 591 (2001), State v. Barton, 93 Wash. 2d 301, 305, 609 P.2d 1353 (1980), and Morley for the proposition that the defendant only should have been apprised that her maximum sentence

³ If the defendant had not accepted the State's plea bargain and proceeded to trial, the State, in conformance with Blakely, would have amended the information so that special interrogatories could have been posed to the jury. If the defendant were found guilty by a jury and the special interrogatories were answered affirmatively, an exceptional sentence would be possible under Blakely.

was 266 months -- the top end of the combined standard ranges for Murder in the Second Degree and Manslaughter in the First Degree. The defendant further asserts that the trial court erred in mentioning the statutory maximum sentence of life imprisonment.

Although Walsh, Barton and Morley are pre-Blakely cases, these opinions do not support the argument that the post-Blakely maximum sentence is automatically converted to the top end of the standard range. In particular, Barton specifically states that a “[d]efendant must be advised of the maximum sentence which could be imposed prior to entry of the guilty plea.” 93 Wash. 2d at 305. Before Ms. Knotek entered her guilty pleas in this case, she clearly faced the possibility of an exceptional sentence had she proceeded to trial. Consequently, the trial court did not err in advising the defendant that the maximum penalty was life imprisonment.

Ms. Knotek also raises the fact that her STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE, along with comments from the judge, contained erroneous

assertions. Specifically, paragraph 6(h) of the defendant's plea statement reads as follows:

The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

While this paragraph does not explicitly recite the strictures imposed by Blakely, it also does not misstate the law. Judge McCauley in this case theoretically could have imposed an exceptional sentence downward. Of course, any upward departure would have resulted in a successful appeal on the defendant's behalf.⁴

In short, as Judge McCauley pointed out in his sentencing decision (see Appendix D), the defendant received a benefit at sentencing precisely because of Blakely. Although the various consequences of Blakely were not known when

⁴ Judge McCauley in his sentencing decision acknowledged the fact that Blakely prevented the imposition of an exceptional sentence upward. See Appendix D. Because the plea bargain into which the defendant entered did not contain explicit factual findings which could justify an exceptional sentence upward, the judge refrained from imposing an exceptional sentence upward, even though he wanted to impose a harsher sentence.

the defendant's guilty pleas were taken, Ms. Knotek nonetheless knew that she was potentially subject to an exceptional sentence if she proceeded to trial. In the end, Ms. Knotek's acceptance of the State's plea bargain inured to her benefit; she was able to limit the amount of jail time that could be imposed. Delineating the theoretical maximum punishment for Class A felonies does not render a guilty plea invalid. In fact, it is the precise opposite -- the failure to recite the theoretical maximum penalty -- which would call into question the validity of a plea.⁵

Finally, the State would point out that if the defendant's position were accepted, there would be a major deleterious public policy ramification. There are arguably thousands of felony cases which are processed by the superior courts each year that involve penumbras emanating from Blakely. Judicial notice should be taken of the fact that felony pleas routinely articulate the maximum penalty under RCW 9A.20.021(1). If the defendant's position were sustained, a cascade of personal restraint petitions and new appeals would inundate

⁵ A defendant's erroneous belief that a sentence would be harsher than it turned out to be does not automatically render a guilty plea invalid. See Matthews, 128 Wash. App. at 274.

the courts. Longstanding judicial practices must not be overturned absent a clear showing that an established rule is incorrect and harmful. State v. Law, 154 Wash. 2d 85, 103, 110 P.3d 717 (2005). No such “clear showing” exists in this instance. The Court of Appeals should find that the traditional practice of delineating the theoretical maximum punishment under RCW 9A.20.021(1) when guilty pleas are entered is neither incorrect nor harmful. Consequently, the defendant’s position should be rejected.

4. Even if Ms. Knotek’s guilty pleas are determined to be invalid, she should not be allowed to withdraw her pleas.

As stated in Isadore, once a defendant’s plea is determined to be invalid,

[t]he defendant has the initial choice of specific performance or withdrawal of the plea. . . . Once the defendant has made his or her choice, the State bears the burden of showing that the remedy chosen is unjust and there are compelling reasons not to allow that remedy. Turley, 149 Wash. 2d at 401, 69 P.3d 338. Where fundamental principles of due process are at stake, the terms of the plea agreement may be enforced, notwithstanding statutory language. Miller, 110 Wash. 2d at 532, 756 P.2d 122.

151 Wash. 2d at 303.

If Ms. Knotek is able to withdraw her guilty pleas, the State asserts that it would be prejudiced. The remedy of withdrawal of the guilty pleas is unjust; there are compelling reasons not to allow this remedy.

To begin with, Count I (Murder in the Second Degree) and Count II (Manslaughter in the First Degree) involve deaths that occurred in 1991 and 2003, respectively. With regard to the death of Kathy Loreno that occurred in 1991, memories of witnesses already have faded; it would be that much harder for the State if this case were returned to the status quo ante. New defense attorneys arguably would need to be appointed, and it is doubtful that the case would be tried before the middle of 2007 given the volume of discovery materials. Due to the passage of time, some of the State's witnesses might be unavailable, and it certainly is the case that memories of the State's witnesses would be more clouded.

Secondly, the plea bargain into which the defendant entered only involved two counts. While plea negotiations were taking place with Ms. Knotek, the State was interviewing

the defendant's husband, David Knotek, who had already pled guilty to Murder in the Second Degree involving the death of Shane Watson which occurred during the interval of 1993-1994 (Shane Watson was a juvenile who was living with the Knoteks at the time of his death). Interviews of Mr. Knotek that occurred after he pled guilty, but before he was sentenced, revealed that Ms. Knotek had conspired with Mr. Knotek to kill Shane Watson. The State specifically continued the sentencing of Mr. Knotek until after Ms. Knotek was sentenced. The State delayed Mr. Knotek's sentencing (with the consent of his counsel) because the State was not certain that a plea bargain could be arranged with Ms. Knotek. One of the conditions associated with Mr. Knotek's plea bargain was that he would testify truthfully if he were called as a witness. As long as Mr. Knotek was not sentenced, the State had some leverage over Mr. Knotek. If Ms. Knotek had chosen to go to trial, it was the State's intention to add an additional count against Ms. Knotek for the death of Shane Watson that occurred during the interval of 1993-1994.

At the time the plea bargain was reached with Ms. Knotek, the State had not added the additional count because interviews with Mr. Knotek about the death of Shane Watson had not been totally completed. The State thought that Mr. Knotek was not being totally candid with regard to Ms. Knotek's participation in the death of Shane Watson. If Ms. Knotek had chosen to go to trial, Mr. Knotek was "on the hook" to testify truthfully. The State believes that it would have been able to use Mr. Knotek's testimony against Ms. Knotek with regard to the death of Shane Watson (notwithstanding the general spousal privilege rule), because RCW 5.60.060(1) contains an exception when a husband or wife is a guardian of the victim. With the passage of time, the State has lost any leverage it had with Mr. Knotek, because he was sentenced shortly after Ms. Knotek.

Thus, if Ms. Knotek is allowed to withdraw her guilty pleas and proceed to trial, the State will not be in the same position as it was when Ms. Knotek accepted the State's plea bargain. Although it is possible that Mr. Knotek still might cooperate with the State, no such assurances are in place.

Taken together, the State asserts that it would be unjust to allow Ms. Knotek to withdraw her guilty pleas because the State's position would be compromised. In sum, the State believes that it is not possible to go back to the status quo ante and place the parties in the same position that existed when Ms. Knotek pled guilty.

D.

CONCLUSION

For the reasons delineated above, Ms. Knotek was not deprived of due process. Her guilty pleas were knowing, voluntary, and intelligent. She was apprised of the direct consequences of her pleas. Her guilty pleas were not invalid. Allowing Ms. Knotek to withdraw her guilty pleas would work a hardship on the State. Ms. Knotek has presented no cogent argument which would justify the reversal of her guilty pleas. Ms. Knotek's request for relief should be denied.

Respectfully Submitted By:



DAVID J. BURKE WBA #16163
Pacific County Prosecutor

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6 STATE OF WASHINGTON
7 PACIFIC COUNTY SUPERIOR COURT
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9 STATE OF WASHINGTON,

NO. 03-1-00148-0

10 Plaintiff,

STATE'S SENTENCING
MEMORANDUM

11 v.

12 MICHELLE L. KNOTEK,

13 Defendant.
14

15 I. PROCEDURAL HISTORY

16 On August 13, 2003, the defendant was charged by Information with two counts of
17 First Degree Murder pursuant to RCW 9A.32.030(1)(b) (i.e. "manifesting an extreme
18 indifference to human life"). The victim in count I was Kathy Loreno, and in count II, Ron
19 Woodworth.

20 One week later, on August 21, 2003, the State filed an Amended Information alleging
21 that the defendant committed two counts of Second Degree Murder ("intentional") pursuant to
22 RCW 9A.32.050(1)(a), or in the alternative, two counts of Manslaughter in the First Degree
23 ("recklessly causing the death of another"). The reason for this Amended Information rested
24 on our State Supreme Court's interpretation of RCW 9A.32.030(1)(b) in *State v. Anderson*,
25 94 Wn.2d 176, 616 P.2d 613 (1980). In that case, the Court held that Murder in the First
26 Degree cannot be based on an "extreme indifference" theory if the behavior was directed at a

1 *specific* individual. Since the State possessed no evidence then (or now) for any alternative
2 theory of First Degree Murder for the deaths of Kathy Loreno and/or Ron Woodworth, the
3 defendant was charged with Second Degree Murder and/or Manslaughter in the First Degree.

4 In charging the defendant with Second Degree Murder, however, the State Supreme
5 Court's decision in *In re: Personal Restraint of Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002)
6 precluded the State from charging the defendant with a felony murder theory predicated on an
7 underlying assault or pattern of assaults for Kathy Loreno's death. While the State could have,
8 arguably, charged the defendant with second degree felony murder for Ron Woodworth's
9 murder, the State had some concerns. The prosecution's evidence shows that the defendant
10 used virtually *identical* patterns of abuse and assaultive behavior against both victims. Thus,
11 the State was faced with having to choose between two *different* theories to prosecute the
12 defendant for essentially identical acts.¹

13 Ultimately, the State elected to pursue both murder counts under the same intentional
14 murder theory. This decision was primarily based on the belief that it would be far less
15 confusing to a jury, less likely to result in a "compromised" lesser verdict of Manslaughter, and
16 would assist the State in defeating the defendant's inevitable motion to sever the two counts.

17 On June 18, 2004, the defendant pled guilty to a Third Amended Information charging
18 her with one count of Murder in the Second Degree (intentional) for killing Kathy Loreno and
19 one count of Manslaughter in the First Degree (recklessness) for killing Ron Woodworth.²

20 II. CURRENT OFFENSES & STANDARD RANGE

21 On June 18, 2004, the defendant entered an Alford/Newton plea and was found guilty
22 of one count of Murder in the Second Degree for killing Kathy Loreno and one count of
23 Manslaughter in the First Degree for killing Ron Woodworth. The 1991 standard range for
24 Murder in the Second Degree is 123-164 months. The 2003 standard range for Manslaughter

25 ¹ The abuse of Ron Woodworth involved pre- and post-*Andress* acts.

26 ² A "Second Amended Information" was previously filed to correct dates in the "Amended Information."

1 in the First Degree is 78-102 months. Because both offenses are serious violent offenses, they
2 must run consecutively. *See RCW 9.94A.589(1)(b)*. Thus, the defendant's total standard range
3 is currently 201 to 266 months (i.e. 16.75-22.1 years).

4 One additional matter requires this court's attention prior to sentencing. On Thursday,
5 June 24, 2004, the United States Supreme Court issued *Blakely v. Washington*, 542 U.S.
6 ___(June 24, 2004). *See Exhibit "A."* This case is directly controlling on the issue of the
7 defendant's sentencing. Under the unique procedural posture of this case, the State believes
8 that this decision precludes this court's ability to impose a sentence above the defendant's
9 standard range.

10 III. FACTUAL BACKGROUND

11 At the outset, the court should not infer that any of the facts recited by the State in this
12 memorandum are done so with any intent to argue for anything other than the agreed upon
13 sentencing recommendation of 201 months (16.75 years). For reasons that will be expanded
14 upon in Section IV, *infra*, the State strongly requests that the court adopt the plea agreement
15 that has been reached through countless hours of negotiation by four experienced attorneys
16 who know the strengths and weakness of their respective cases.

17 As the court has been made aware, the discovery issued in this matter consists of
18 several thousand pages of documents. In addition to the voluminous nature of the physical
19 files, even more information has been gleaned in the process of interviewing proposed state
20 and defense witnesses. Even so, and despite our best efforts, we cannot assure the court that
21 we now know, or will ever know, with absolute certainty, what occurred at the Knoteks'
22 residence between 1990 and 2003.

23 The State's case would have been predicated almost entirely on the cumulative
24 recollections of the Knoteks' daughters, Leslie, Samantha, and Tori. *See Exhibits "B"*
25 *(statements of Leslie Rivardo)*, *"C" (statements of Samantha Knotek)*, and *"D" (statements of*
26 *Tori Knotek)*. At times, their recollection of what occurred in the home has been dimmed by

1 | the passage of time, their relatively young ages at the time of the offenses, their strong desire to
2 | forget the abuse they witnessed, and/or the fact that they were simply not in a position to
3 | witness every act of suspected abuse (as opposed to the effects of the abuse).

4 | Cognizant of the limitations of our three primary witnesses, the State sought additional
5 | information about the killings by entering into a plea agreement with David Knotek. As part of
6 | his plea, he was to provide further information about the deaths of Kathy Loreno, Ron
7 | Woodworth, and Shane Watson.³ It is highly likely that David Knotek did not fully disclose
8 | the information he knew about his wife's involvement, or his own involvement, in these three
9 | deaths. He was unquestionably hesitant to provide any negative information about his wife
10 | throughout the very extensive interviews that he was required to give. In addition, and in an
11 | effort to verify the information he provided the State, David Knotek was administered two
12 | polygraphs examination. He failed both.

13 | At the same, there is no question that David Knotek was out of the home during a
14 | significant period of time while Kathy Loreno lived there with his wife and children. When
15 | Ron Woodworth resided in the family home, David worked in Island County and returned
16 | home only on the weekends. Thus, there is a considerable question as to what abuse he could
17 | have personally witnessed or inflicted. There can be no question, however, that he was aware
18 | of the abuse that was going on, he himself abused both victims, and he allowed, perhaps even
19 | encouraged, his nephew Shane Watson to abuse Kathy Loreno.

20 | **A. Count I - Murder in the Second Degree (Kathy Loreno)**

21 | In approximately 1991, Kathy Loreno began living with the Knotek family in the South
22 | Bend area. Kathy was offered a place to live by the defendant, who had become friends with
23 | her over the span of several months. When Kathy moved into the home, the defendant was
24 |

25 | ³ The State entered this plea agreement fully cognizant that the marital privilege would bar David
26 | Knotek's testimony against his wife in the deaths of Kathy Loreno and Ron Woodworth.

1 pregnant with her youngest child, Tori. Daughters Leslie and Samantha were teenagers or pre-
2 teenagers at the time.

3 Prior to moving in with the family, Kathy had been employed as a hair stylist. When
4 her job ended, she needed a place to live and accepted the defendant's offer to move in with
5 her family. There appears to have been some understanding that Kathy would help out around
6 the house with the two older children and assist the defendant after she delivered her third
7 child, Tori.

8 By all accounts, Kathy and the defendant were very close friends, she was welcomed
9 into the family with open arms, and she was initially treated well. The two older daughters
10 recall Kathy fondly, and stated that she was warm, friendly, though at times, they may have
11 resented her standing in the shoes of their mother when she disciplined them.

12 Eventually, however, the defendant's treatment of Kathy began to change. This change
13 appears to have begun in the latter stages of her pregnancy with Tori. Statements taken from
14 Leslie and Samantha indicate the following specific acts of abuse they witnessed their mother
15 inflict on Kathy:

16 1. Pulling Kathy's hair, pulling and dragging her along the ground (even while she was
17 far along in her pregnancy).

18 2. Hitting and slapping, including numerous blows to the head.

19 3. Forcing Kathy to ingest medication.

20 4. Forcing Kathy to ingest salt and rotten foods.

21 5. Using an improvised "ducking board" where Kathy was tied to a board and inverted
22 to the point where her head was under water (David was the purported operator of the device,
23 Shane Watson assisted).

24 6. Forcing Kathy to stay outside the home with little or no shelter.

25 7. Forcing Kathy to work in extreme weather conditions while minimally clothed or
26 naked.

1 8. Emotionally abusing Kathy, to include accusations of placing food in her room and
2 then accusing her of stealing it, calling her fat, etc.

3 9. Forcing Kathy to “wallow” in cold water and mud as punishment, resulting in
4 hypothermic conditions.

5 While they described the types of abuse they saw their mother employ, not surprisingly,
6 the daughters have had some difficulty quantifying the precise amount and general dates.
7 Because they were relatively young at the time, may not have witnessed all the abuse inflicted
8 by the defendant, and have struggled to put the past behind them, Leslie and Samantha are
9 understandably somewhat vague in their recollections of the defendant’s abuse of Kathy. For
10 example, neither can recall how many times the defendant struck Kathy in the head, though
11 they know she did.

12 While the specific assaultive acts are somewhat unclear, the end result of the abuse is
13 not. When she entered the home, Kathy Loreno was in good health, though overweight. At
14 the hands of the defendant, Kathy lost approximately 100 pounds, her hair and teeth fell out,
15 and she declined physically and appreciably in motor skills. Near the very end of her life,
16 Kathy was unable to walk or talk, she was unable to decipher a simple child’s toy, and one side
17 of her face drooped as if she had suffered a stroke – symptoms entirely consistent with
18 repeated blows to her head.

19 Leslie and Samantha have been consistent and unequivocal in asserting that their
20 mother was the prime instigator and main force behind the abuse in their home. They
21 described David Knotek as being weak-willed and willing to do anything he could do to
22 appease the defendant. Other family members describe David as losing touch with them after
23 he married the defendant. He no longer kept in touch with them on a regular basis and they
24 describe him as essentially being under her spell.

25 When Kathy finally died, she lay confined to a bed in the home, was vomiting all over
26 herself, and her eyes were unable to track objects. This condition was obviously preceded by a

1 substantial amount of abuse, including blows to the head. At the time Kathy died, the
2 defendant was in Grayland picking up her daughter Leslie who was working at a motel. David
3 called Leslie's place of work and informed the defendant that Kathy had expired, and they all
4 returned to the home.

5 After they reached home, the defendant and David discussed what to do with Kathy's
6 remains. Collectively, the two decided to burn her body in the back yard. While the defendant
7 did not take part in burning Kathy's body, her nephew Shane apparently did. The defendant
8 did, however, orchestrate the cover-up of Kathy's death. It was she who concocted the story
9 about Kathy running away with her boyfriend, she who repeatedly quizzed her children about
10 the story to insure they would not forget it, and she who generated letters to Kathy's family so
11 they would believe she was still alive.

12 The forensic evidence as to this count is limited. Kathy's body was never found,
13 although one human bone shard was recovered from the property. Due to environmental
14 degradation, however, no DNA analysis was possible. This shard may have come from either
15 Kathy's body or Shane Watson's body. In addition, while the presence of human blood was
16 detected in the Knotek residence, and some of it was even consistent with blood spattering, the
17 State is still unable to determine who this blood came from or when it was deposited in the
18 home.

19 On at least one occasion Kathy Loreno did attempt to leave the Knotek home. On this
20 one occasion, she appeared at the home of an acquaintance and told this person that she needed
21 to make some decisions in her life. Later, when Kathy and the acquaintance were out together,
22 they encountered the defendant. The defendant was visibly angry with Kathy and they spoke
23 with each other for about an hour. At the end of the conversation, Kathy informed her
24 acquaintance that she would be returning home with the defendant. While Kathy appeared
25 upset, she left with the defendant without apparent physical force or threat of force.

1 Expert testimony was anticipated from Dr. Steven Hart. He would have testified that
2 the defendant was a sadist and derived pleasure from abusing others. In conversations with Dr.
3 Hart, he described the defendant's relationship with victims as being much like a classic
4 domestic violence relationship. There would be periods of profound emotional and physical
5 abuse that were followed by a "honeymoon period," where care and kindness would be shown
6 the victim. This testimony would have explained why the victims did not or could not seek
7 help from outside the home, or if they did, why they always returned to the abusive situation
8 contrary to all common sense.

9 **B. Count II - Manslaughter in the First Degree (Ron Woodworth)**

10 In October 2001, approximately 10 years after Kathy died, Ron Woodworth entered
11 the Knotek home in the same manner that Kathy had; he was invited as a welcomed friend. By
12 this time, however, Leslie and Samantha Knotek had moved away from the home and the
13 South Bend area. They are, therefore, unable to testify to having witnessed any abuse of Ron.
14 Tori, however, was present in the home and would have been the State's primary witness to the
15 abuse inflicted by the defendant against Ron. At the time Ron came to live with them, Tori
16 would have been around 10 or 11 years old.

17 Police involvement in this matter was driven by a conversation that Tori had with her
18 sister Samantha while she was visiting her in the Seattle area. Tori mentioned that Ron had
19 moved out of the home suddenly, and a conversation ensued about the things she saw her
20 mother do to Ron. Samantha's reaction to what she was hearing was swift and agonizing. She
21 immediately thought that "it is happening all over again," or words to that effect.

22 Like her sisters, Tori gave several statements about the abuse she witnessed her mother
23 inflict on Ron. The abuse included:

- 24 1. Hitting, kicking, and slapping.
- 25 2. Forcing Ron to ingest medication.

1 3. Administering “medical” treatments to include immersion of Ron’s badly injured
2 feet in boiling water and bleach.

3 4. Forcing Ron to stay outside the home with little or no shelter.

4 5. Forcing Ron to work in extreme weather conditions while minimally clothed or
5 naked.

6 6. Emotionally abusing Ron to include accusations of stealing food.

7 7. Forcing Ron to “wallow” in cold water and mud as punishment, resulting in
8 hypothermic conditions.

9 8. Forcing Ron to jump from trees and the porch, resulting in bodily injury.

10 While Leslie and Samantha did not personally witness the abuse, they certainly saw the
11 effects when they visited the home on very rare occasions. Like Kathy approximately 10 years
12 earlier, Ron Woodworth lost his teeth, appeared to be suffering from malnutrition, and wasn’t
13 himself any longer.

14 While Tori is somewhat less clear in the *specifics* of the abuse she saw her mother
15 inflict on Ron, the forensic evidence of that abuse is, unlike Kathy’s death, overwhelming.
16 Pathologist Katherine Raven reported that while there was “[n]o specific anatomical or
17 toxicological cause of death, however, there was evidence of environmental exposure and
18 hypothermia in addition to multiple old and new skeletal fractures. Due to the circumstances
19 surrounding his death the manner of death is best classified as homicide.” *See Exhibit “E.”*

20 Ron’s body bore numerous indicia of inflicted trauma; he had acute (i.e. recent) left and
21 right wrist fractures, an acute right ankle fracture, an older right wrist fracture, multiple acute
22 and older rib fractures, and gastric ulcers indicating exposure to hypothermic conditions.
23 Finally, both feet were bandaged in cloth and one ankle had what appeared to Dr. Raven to be
24 a severe gash on the heel. Clearly his death was preceded by immense amounts of pain and
25 suffering.

1 Like Kathy, there is ample evidence Ron left or attempted to leave the home, and
2 abuse, on numerous occasions. There is evidence that Ron Woodworth certainly had the
3 physical opportunity to leave the abuse he suffered; on most occasions, it would have meant
4 simply walking down the street, calling the police, and/or refusing to accompany the defendant
5 back home. However, as with Kathy's situation, the State was prepared to call Dr. Hart to
6 explain this relationship and describe why a victim would return to the situation in
7 contravention of all common sense.

8 In Tori's conversations with her sisters in the summer of 2003, it became clear that the
9 defendant's behavior patterns mirrored those she exhibited against Kathy. It was this final
10 death that prompted Leslie and Samantha to contact the police and led to David and Michelle
11 Knoteks' arrests.

12 IV. THE PLEA AGREEMENT

13 The negotiations that led to this plea agreement were undertaken on two primary levels;
14 factual and legal. At the outset, all counsel recognized that if the facts alleged and presented
15 by the State were proven to be true, the defendant would not receive a favorable sentencing
16 recommendation from the State. Succinctly put, the facts of this case are horrific. At the same
17 time, the State and defense also realized that this case had many complex legal issues that
18 would play out not only in the trial court but the appellate courts as well.

19 As a result, the State undertook a very deliberate approach to the factual issues in this
20 case in relation to a variety of legal principles. As part of this analysis, the State viewed the
21 case in relation to four separate categories. All weighed strongly in favor of this plea
22 agreement. These four categories are summarized below.

23 A. Legal analysis.

24 1. As noted above, the most serious charge legally and factually available to the State
25 was Murder in the Second Degree. If convicted of both counts, the defendant's standard range
26

1 sentence would be 246-384 months (20.5-32 years) (i.e. 123-164 months for Kathy Loreno's
2 1991 murder and 123-220 months for Ron Woodworth's 2003 murder, to be served
3 consecutively). 2. For Kathy Loreno's death, Murder in the Second Degree predicated
4 on an assault or pattern of assaults was not available to the State under the Washington State
5 Supreme Court's *Andress* opinion. Thus, and as noted above, the State was essentially forced
6 to elect to pursue intentional murders for both killings. While intent could be proven, the facts
7 of this case are most consistent with a felony murder theory.

9 3. If the matter proceeded to trial, a jury would almost certainly have been given lesser
10 included instructions for Manslaughter in the First Degree ("recklessness"). If a jury (or even a
11 single juror) were "hung up" on the issue of intent, then Manslaughter in the First Degree
12 would be an attractive compromise. If this occurred, a typical sentence within the standard
13 range would be about 10 years.⁴

15 4. David Knotek's most damaging statements against his wife were those taken shortly
16 after his arrest. However, in the course of briefing the admissibility of these statements under
17 the "statements against penal interest" exception to the hearsay rule, the United State Supreme
18 Court handed down their opinion in *Crawford v. Washington*, 541 U.S. ___ (2004). Thereafter,
19 no argument remained that these immediate post-arrest statements could be admitted in a trial
20 against his wife under this hearsay exception. The spousal privilege barred the vast majority of
21 his remaining statements.

25 ⁴ This presumes, of course, that a jury would not be given or find the lesser charge of Manslaughter in
26 the Second Degree.

1 5. While the State was prepared to offer the testimony of Dr. Steven Hart to testify
2 about the defendant's acts and the impact of those acts on others, it is unclear how much of this
3 testimony would have been admitted at trial.
4

5 **B. Factual analysis.**

6 There were numerous factual issues that the State took into account in entering this plea
7 agreement. Included among these were:

8 1. Kathy's body was never recovered. Therefore, no scientific cause of death could
9 ever be determined.

10 2. The defendant was not at home at the time Kathy died.

11 3. Ron's cause of death, while "best classified as a homicide," would have been
12 disputed by the defense. The defense would have offered the testimony of Dr. William Brady
13 to argue that Ron had attempted suicide in the past. Dr. Brady was expected to testify that at
14 least some of his injuries could not be ruled out as having been self inflicted.

15 4. While the State would have offered expert psychological testimony to explain why
16 Kathy and Ron were emotionally unable to flee the abuse they suffered, the simple fact
17 remained that for much of the time, they were not physically restrained and, at least early on,
18 had apparent abilities and opportunities to flee the defendant's violence.

19 5. The memories of the three primary State's witnesses lacked much detail. While all
20 three daughters could unequivocally recall the violence they had witnessed in *general*, when it
21 came to *specifics*, and of most concern, the specific act or acts that caused the deaths, there
22 were gaps in their ability to recall.

23 **C. Tactical analysis.**

24 The court is aware that the plea agreement in this case was struck prior to any
25 significant pre-trial hearings being held. Hearings that were pending included: (1) a renewed
26 Bill of Particulars motion, (2) a change of venue motion, (3) the State's CrR 3.5 hearing, and

1 (4), a motion to sever counts. In addition, the State anticipated a possible challenge to some of
2 the evidence collected under CrR 3.6 and the State was in the process of briefing the
3 admissibility of evidence under ER 404(b)(acts alleged to have been committed against the
4 daughters by the defendant).

5 While the State firmly believed it would prevail in all these matters, it also recognized
6 that the State's case would only get worse, never better, if one or more of these motions were
7 lost. By entering into the plea at this juncture, the State did not run the risk of losing one or
8 more of these pre-trial motions.

9 **D. Equitable analysis.**

10 In any case, there are any number of equities that should be weighed in addition to a
11 stark analysis of the facts and the relevant law. In reaching this plea agreement, there were
12 several matters that the State calculated under this heading.⁵

13 1. It did not escape the State's attention that the defendant was potentially more
14 criminally culpable than her husband. She was present in the home at all times and was
15 arguably in the best position to stop her own abusive conduct and the abusive conduct of
16 others. While David Knotek was unquestionably involved in abusing Kathy and Ron as well,
17 there was simply insufficient evidence to charge him with those acts, even if they had been
18 within the statute of limitations. Therefore, David Knotek now faces a range of 123-164
19 months (i.e. 10.3-13.6 years) when he is sentenced.⁶ However, the defendant agreed to an
20 exceptional sentence of 179 months (i.e. 15 years)(164 months + 12 months + 3 months, to run
21 consecutively = 179 months). It is probable that Shane Watson also played a role in abusing
22 Kathy before she died, though to what extent remains unclear. Parity in the two defendant's
23

24 ⁵ One factor that was not considered was the financial cost to Pacific County. While the trial (or trials,
25 if severed) would undoubtedly have cost the county several hundred thousand dollars and impacted the entire
26 county budget, it was simply not a matter that was considered in reaching this plea.

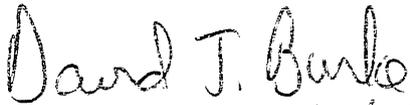
⁶ David Knotek pled guilty to Murder in the Second Degree, Unlawful Disposal of Human Remains
(misdemeanor), and Rendering Criminal Assistance in the First Degree (gross misdemeanor).

1 issues to their ultimate conclusions, some known, but many more unknown, the defendant has
2 allowed not only herself, but many others, to move beyond the terror and trauma of this case.

3 A sentence of 201 months will insure that the defendant will not only be punished, but
4 punished severely. At the same time, it affords the defendant some recognition for giving up
5 the right to litigate issues she is not in agreement with and brings certainty to matters that are
6 anything but certain.

7 The State has spent a considerable amount of time and given a considerable amount of
8 thought to this plea agreement. In our collective experience, we believe this agreement to be in
9 the best interest of justice and we wholeheartedly and unhesitatingly endorse it. We
10 respectfully urge this court to do so as well.

11
12 DATED THIS 2 day of July, 2004.

13 
14 _____
15 DAVID J. BURKE, #16163
16 Pacific County Prosecuting Attorney

17 
18 _____
19 BRIAN T. MORAN, #17794
20 Assistant Attorney General
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FILED

04 JUN 16 PM 4: 56

JENNIFER LEACH, CLERK
PACIFIC COUNTY, WA

DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON _____,
Plaintiff

MICHELLE L. KNOTEK
Defendant.

NO. **03-1-00148-0**
STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO NON-SEX
OFFENSE
(STDFG)

1. My true name is: MICHELLE L. KNOTEK
2. My age is: 50
3. I went through the H+ grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
 - (b) I am charged with: Murder in the Second Degree (intentional) and Manslaughter in the First Degree.
The elements are: Count I – Murder in the Second Degree – on or between or between **January 1, 1991 and December 31, 1991**, with intent to cause the death of another person to wit: Kathy Loreno, caused the death of such person; contrary to RCW 9A.32.050(1)(a). **Count II Manslaughter in the First Degree** - on or between **October 1, 2001 and August 9, 2003**, did recklessly cause the death of another person, to wit: Ron Woodworth, contrary to RCW 9A.32.060(1)(a).
5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

APPENDIX 'B'

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
I	0	123-164 months			24 months community placement	Life
II	0	78-102 months			24 – 48 months community custody	Life
		sentences to run consecutively				

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a

mandatory sentence of life imprisonment without the possibility of parole is required by law.

- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge will order me to serve 24 months of community placement or up to the period of earned early release, whichever is longer. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge: 123 months on Count I; 78 months on Count II to be served consecutively, for a total of 201 months (16.75 years). \$110 Court costs; \$500 CVC; \$100 DNA testing; \$100 crime lab fee; public defender to be determined, restitution to be determined; Community custody for 24 months or up to the period of the Earned Early Release Date, whichever is longer.

[] The prosecutor will recommend as stated in the plea agreement, which is incorporated

by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- [l] This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- [m]  The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- [n]  If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in Attachment "A."
- [o] If this crime involves a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis.
- [p]  If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- [q] If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- [r] The judge may sentence me under the special drug offender sentencing alternative (DOSA)

if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.

TS
MC

[s] If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

[t] If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

[u] If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

[v] If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

[w] If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

[x] The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[l].

[y] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts I and II will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

[z] I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

TS
MC

TS
MC

[Handwritten initials]

[aa] I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

[bb] I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

7. I plead guilty to:
count I – Murder in the Second Degree and Manslaughter in the First Degree in the 3rd Amended Information. I have received a copy of that Information. (ALFORD)

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: _____

Alford Plea

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and Attachment "A," if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Handwritten signature]

Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Handwritten signature]

SCOTT HARMER, WSB#24042
Attorney for Defendant

[Handwritten signature]

DAVID J. BURKE, WSB#16163
Prosecuting Attorney

[Handwritten signature]
Asst AG #17794

Brian Moran

BRIAN MORAN, WSB#17794
Chief Criminal Prosecutor
Assistant Attorney General

Joseph P. Enbody
JOSEPH P. ENBODY, WSB #
Attorney for Defendant 1798

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to ~~him~~ or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: June 18, 2004

D. Mark McCauley

JUDGE

INTERPRETER'S DECLARATION

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the _____ for the defendant from English into that language.

Identify document being translated

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Location: _____

FILED

04 JUL 19 AM 11:05

YVONNE LEACH, CLERK
PACIFIC COUNTY, WA

BY _____
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

MICHELLE L. KNOTEK,

Defendant.

NO. 03-1-00148-0

SUPPLEMENTAL SENTENCING
MEMORANDUM

By document dated June 16, 2004, an initial document entitled Defendant's Statement on Sentencing was submitted to the Court and by this reference it is incorporated to this document as well because it sets forth many of the underlying problems and facts, contradictory statements, and other matters that are reflective of the agreement reached between the prosecution and defense in these proceedings. The initial document, however, was submitted prior to the review of the recent State's Sentencing Memorandum dated July 2, 2004 and prior to the decision of the U.S. Supreme Court in the case of Blakely v. Washington decided on June 24, 2004.

This memorandum is submitted to further assist the Court by providing additional perspectives, the context under which the plea

1 was entered, and factors that support the recommendations made to
2 the Court by both the State and the defense.

3 I.

4 AGREEMENT OF BOTH STATE AND DEFENSE

5 It is rare that in cases even remotely similar to this that
6 both the prosecution and defense are in agreement as to what
7 sentence should be imposed. It is respectfully requested that the
8 Court give strong consideration to a recommendation that not only
9 is requested by the very people that have brought these charges in
10 the first place, but that also follows days, weeks, and months of
11 investigation, reflection, and negotiation. It is easily
12 recognized, therefore, that the recommendation has not been hastily
13 made nor has it been made without intensive investigation.

14 Additionally, it is hoped that the Court will also consider
15 that the recommendation being made to the Court is being made by
16 those with the greatest knowledge of the facts and issues, but also
17 by those with several years of experience in matters of criminal
18 law. The time and effort involved by both parties in reviewing
19 approximately 10,000 pages of documentary evidence, thousands of
20 photographs, numerous videotapes, and numerous witness statements
21 and investigative reports will hopefully assure the Court that the
22 agreement reached here is an appropriate sentence and is exactly
23 what the prosecution believes to be the appropriate outcome of
24 these proceedings.
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II.

MAKING THE "CRIME FIT THE TIME"

AND NOT THE "TIME TO FIT THE CRIME"

We are all aware of the difficulties inherent in what is known as the Sentencing Reform Act. We would all like to believe (and frequently delude ourselves in attempting to do so) that in a plea bargain situation agreements are reached first on what particular crime was committed and that the sentencing recommendations are then made in reference to the "standard range." This difficulty is often seen in pleas known as "In re Barr Pleas" where a plea is entered to a crime that is a lesser crime than the crime initially charged and the charge to which the plea is entered bears little or no resemblance to the facts of the case so that a lower sentencing range can be imposed.

What happened here is virtually the same. In these proceedings a term of imprisonment was agreed upon by both parties and then the charges were agreed to fit the term of imprisonment that is recommended. Due to the lack of any criminal history of Mrs. Knotek, that would affect the "standard range." There were a limited number of crimes that would even come close to what is being recommended here without providing for post-conviction relief.

Murder in the Second Degree was considered because any charge less than that would not provide the requested range and, if a

1 lesser charge was accepted, it would be subject to possible later
2 attack as violating the applicable statute of limitations given the
3 offense date of 1991. The combination of Murder in the Second
4 Degree and Manslaughter was the only way to attain the proposed
5 term of confinement even though there were numerous unresolved
6 factual and legal issues at the time of the plea.

7 Consideration was also given to what had been recommended in
8 the case of David Knotek. The low end of the range was recommended
9 even though it is more than the recommendation of 179 months
10 currently before the Court in that proceeding. At the time of Mr.
11 Knotek's plea, an exceptional sentence was agreed upon by running
12 all counts consecutively. The "exceptional" aspect in that
13 proceeding is obviously now in question due to the decision in the
14 case of Blakely v. Washington. Consequently it appears as if Mrs.
15 Knotek will do a somewhat longer term of confinement than Mr.
16 Knotek unless the prosecution takes advantage of the options
17 available to them under the plea agreement regarding Mr. Knotek as
18 it is undisputed that his plea agreement has been breached.

19
20 **III.**

21 **THE SEVERITY OF THE**

22 **SENTENCE RECOMMENDED**

23 The context of Mrs. Knotek's plea are reflected in the plea
24 agreement and support the fairness of the recommendation being made
25 to the Court. First of all, unlike many other circumstances, the
26

1 sentences for the crimes in this proceeding are to run
2 consecutively and not concurrently. Mrs. Knotek will serve
3 separate time for each separate crime. It should also be noted
4 that these crimes do not allow for either the "early release
5 policies" or the standard 1/3 off for good behavior. Her "good
6 time" credits will be substantially lessened due to the designation
7 of these crimes under the Sentencing Reform Act and, of course,
8 credit that may not be given by the Pacific County Sheriff's Office
9 during the long period of confinement in the Pacific County Jail.

10 It is also requested that the Court give serious consideration
11 to the quality of time already spent in custody. As the Court is
12 well aware, she has not been allowed access to newspapers or other
13 periodicals, telephone access to others that are afforded to other
14 inmates, she has been restricted on the amount of paper on which to
15 write, restricted her use of funds available to purchase personal
16 affects, and further confiscation of funds given to her to do so.
17 This list given here is not complete nor necessarily to reflect
18 unfavorably on jail policy, but to emphasize to the Court that some
19 consideration should be given to the "quality" of her confinement
20 over the past several months.

21 Mrs. Knotek is also 50 years of age and it is asserted that
22 the long term of confinement being recommended to the Court falls
23 more heavily on one of Mrs. Knotek's age than of a younger person
24 and without question she will have far less to look forward to than
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26

1 a younger person serving the same sentence.

2 Finally, it is also hoped that the Court will recognize not
3 only that 201 months is a very long time, but that the decision to
4 enter such a plea was also reflective of the threat of an
5 exceptional sentence recommendation in the unfortunate circumstance
6 of a conviction. That threat certainly is not as strong in light
7 of the current Blakely decision as it was at the time the plea was
8 entered.

9 IV.

10 THE NUMEROUS UNCERTAINTIES OF THIS CASE

11 ESTABLISH THE RECOMMENDATION TO BE

12 A FAIR AND JUST RECOMMENDATION

13 It cannot be seriously argued that the uncertainties present
14 here were not numerous and significant. There was no "smoking gun"
15 evidence that would require the plea and it is unlikely that as
16 even acknowledged by the prosecution that anyone will ever know who
17 or what was responsible with any real degree of certainty. There
18 were, to name just a few, uncertainties such as:

- 19
- 20 1) Would the counts be severed for trial;
 - 21 2) What would be the likely outcome if the counts were
22 severed and what would be the likely outcome if the
23 counts were not severed;
 - 24 3) What evidence would be admitted if the counts were
25 severed and what evidence would be allowed if not so
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severed;

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- 4) If not severed, what evidence would be heard in one count that may well influence the jury in deciding another count despite curative instructions;
- 5) What alleged acts or misconduct would be allowed and what influence would allegations of such acts have been even if curative instructions were given;
- 6) Would all evidence survive Criminal Rule 3.6 Hearings;
- 7) Would the expected testimony of Dr. Hart be allowed despite obvious foundation issues and the requirements of the Frye Decision;
- 8) Would a change of venue be granted and if not, what would be the extensive pretrial publicity have;
- 9) If severance was not granted, what would be the ability to call David Knotek as a witness pertaining to one count without the ability to restrict his testimony on the other count;
- 10) The lack of any acts by Mrs. Knotek that would be consistent with the most likely cause of Ms. Lorenzo's death as established by the only known pathologist available in these proceedings;
- 11) The problem of the autopsy that was performed by the State following the death of Mr. Woodworth that only found a cause of death "consistent" with criminal means

1 and the testimony of an expert pathologist alleging that
2 the cause of death was also consistent with many other
3 means that were not criminal;

4 12) The possibility of an exceptional sentence if convicted;

5 13) The issue of witness memory of events that occurred over
6 13 years ago as established by the contents of
7 correspondence from Dr. Loftus attached to this
8 Memorandum;

9 14) Uncertainty as to whether or not additional crimes would
10 be alleged for filed;

11 15) The possible concern that a jury may have that if
12 acquitted, the jury may likely fear that no one would
13 ever be held accountable since David Knotek had been
14 granted immunity even before all information had been
15 gathered;

16 16) The uncertainty over the role of David Knotek in the
17 deaths of Ms. Loreno and Mr. Woodworth that initially was
18 attributed to Mrs. Knotek; and

19 17) Evidence of untruthfulness available through numerous
20 witnesses concerning two prime witnesses in the death of
21 Ms. Loreno contradictory and inconsistent statements by
22 State's witnesses and the fact that at various times Mrs.
23 Knotek has been charged with not only the original
24 information, but three different and subsequent
25 information, but three different and subsequent
26

Informations as well.

1 This list is not exhaustive, but is given with the hope that
2 it will make more clear that the evidence was not "clear cut" in
3 many significant aspects and that the recommendation made under
4 these circumstances is fair not only to both sides, but to the
5 public as well. Neither side "gave away the farm" here and the
6 plea agreement has been shown to be fair and just if fair
7 consideration is given to all aspects of this case, the totality of
8 the circumstances, and the context in which this agreement was
9 reached.

11 V.

12 **CONCEPT OF COST AVOIDANCE**

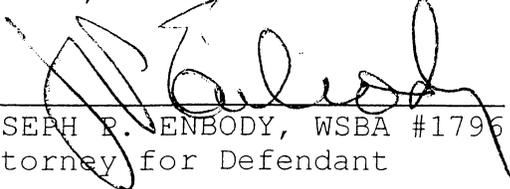
13 It is also requested that the Court give consideration to the
14 concept of costs. Certainly the decision by Mrs. Knotek to enter
15 into this plea has saved the community much cost and expense that
16 a trial would have required. If convicted there would also be the
17 cost associated with an appeal.

19 There are, however, many other costs that have been avoided by
20 the decision of Mrs. Knotek. The emotion cost of family members of
21 victims should not be ignored nor should the emotional cost and
22 stress that a trial would cause to the Knotek children and has
23 allowed virtually everyone to move on and attempt to put this whole
24 unfortunate set of circumstances in the past. For all of these
25 reasons, and perhaps others, it is respectfully requested that the
26

1 Court adopt what has been recommended as an appropriate term of
2 confinement given the totality of the circumstances surrounding
3 these proceedings.

4 RESPECTFULLY SUBMITTED this 19 day of July, 2004.

5 ENBODY, DUGAW & ENBODY

6 
7 _____
8 JOSEPH P. ENBODY, WSBA #1796
9 Attorney for Defendant

10 
11 _____
12 SCOTT HARMER, WSBA #24042
13 Attorney for Defendant

1 never have a better friend. I let Kathy down in the
2 worst way and for that -- for most -- for that most
3 of all, I'll never forgive myself. I know you and
4 your family are hurting and have been for some time
5 and I wish I had the right words to say to you
6 because I am so sorry but those aren't enough.

7 I am going away that I deserve and if you
8 should ever want to speak to me to ask me questions,
9 I will answer them honesty -- honestly. I know my
10 accountability in Kathy's death and I promise you
11 and your family that I will never forget that. I am
12 over 50 years old and what is left of my life I'll
13 try in some way to do something that would make
14 Kathy proud of me.

15 Your Honor, I don't know why I didn't see
16 what was happening but it is -- it was my
17 responsibility. It was.

18 THE COURT: Anything else from the
19 Defense?

20 MR. ENBODY: No.

21 THE COURT: Does the State have
22 anything else?

23 MR. MORAN: No, Your Honor.

24 MR. BURKE: No, Your Honor.

25 THE COURT: All right. I just want to

1 let both sides know that I did -- I got substantial
2 materials from both sides and appreciate the work
3 and the effort in putting those materials together.
4 I read through everything that was submitted. Just
5 as was stated, I know this is just kind of a
6 condensed version of all the reports and all the
7 evidence and all the testimony or I guess statements
8 that were recorded of the various people involved in
9 this case and I realize there are a lot of details
10 that are never going to be known for sure, as was
11 stated, but I do know a few things for sure:

12 I know that there's good and evil in this
13 world and I think we have all seen the consequences
14 of evil and what it does;

15 I know in reading the lengthy statements
16 that were provided to me from Michelle Knotek that
17 she's been living a life of lies for close to 15
18 years now and frankly, what she's says I have no
19 faith or trust in because I can't distinguish when
20 she's lying or when or if she ever tells the truth;

21 I know for sure that the three non-family
22 members that lived at the Knotek residence during
23 the last 15 years are all dead and cannot come
24 forward and say what went on from their point of
25 view;

1 And I know for sure that she's pled guilty
2 to two horrible crimes, to Murder in the Second
3 Degree and to Manslaughter;

4 I also know and deeply am convinced that she
5 deserves the top end of the standard range on both
6 the Murder in the Second Degree charge where she's
7 pled guilty and the Manslaughter charge where she's
8 pled guilty and I'm imposing the top of the range on
9 both horrible crimes that she's pled guilty on;

10 I also know, finally, that she should be
11 very thankful to the U.S. Supreme Court and the 5-4
12 decision in Blakely v. Washington because this would
13 not be the sentence that I would hand down but for
14 that decision.

15 Do you want some time to put together the
16 touches on the Judgment and Sentence or --

17 MR. MORAN: No, Your Honor, I think it's
18 -- so it's 164 months on Count One and 102 months on
19 Count Two?

20 THE COURT: Yes.

21 MR. MORAN: For a total of 266 months.

22 THE COURT: Correct.

23 (Court signed Judgment and.
24 Sentence.)

25 THE COURT: Court's in recess.

FILED
COURT OF APPEALS

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STATE OF WASHINGTON

BY _____
DEPUTY

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

STATE OF WASHINGTON,)	
)	NO 33644-8-II
Respondent.)	
)	AFFIDAVIT OF MAILING
vs.)	
)	
MICHELLE KNOTEK,)	
)	
Petitioner.)	
_____)	

STATE OF WASHINGTON)	
)	ss.
COUNTY OF PACIFIC)	

VICKI FLEMETIS, being first duly sworn on oath, deposes and says:

I am the Office Administrator for the Pacific County Prosecutor.

That on APRIL 18, 2006, I mailed two copies of Respondent's Brief to GREGORY C. LINK at the following address:

GREGORY C. LINK
ATTORNEY AT LAW
1511 THIRD AVENUE, SUITE 701
SEATTLE, WA 98101

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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VICKI FLEMETIS

SUBSCRIBED & SWORN to before me this 18th day of
APRIL, 2006.


NOTARY PUBLIC in and for the State
Of Washington, residing at Raymond

Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
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