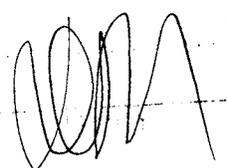


CO. OF APPEALS
COURT OF APPEALS
PH12:44


NO. 34802-1-II
Cowlitz Co. Cause NO. 05-1-01199-5

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

STATE OF WASHINGTON,

Appellant,

v.

KEITH IAN DOW,

Respondent.

BRIEF OF APPELLANT

SUSAN I. BAUR
Prosecuting Attorney
MICHELLE NISLE/#35899
Deputy Prosecuting Attorney
Attorney for Appellant

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360/577-3080

TABLE OF CONTENTS

| | Page |
|---|-----------|
| I. ASSIGNMENTS OF ERROR..... | 1 |
| A. THE TRIAL COURT ERRED WHEN IT FOUND THAT RCW 10.58.030 WAS UNCONSTITUTIONAL ON ITS FACE..... | 1 |
| B. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE RESPONDENT’S CONFESSION WAS NOT ADMISSIBLE..... | 1 |
| II. ISSUES PRESENTED..... | 1 |
| 1. IS A STATE LEGISLATURE ABLE TO SET A DIFFERENT CORPUS DELICTI STANDARD THAN THE STANDARD SET FORTH BY FEDERAL CASE LAW? | 1 |
| 2. WAS THERE SUFFICIENT EVIDENCE OF THE TRUSTWORTHINESS OF THE RESPONDENT’S STATEMENTS FOR THEM TO BE ADMISSIBLE AT TRIAL?. | 1 |
| III. SHORT ANSWERS..... | 1 |
| IV. STATEMENT OF THE CASE | 2 |
| V. ARGUMENT..... | 8 |
| A. THE TRIAL COURT ERRED WHEN IT FOUND THAT RCW 10.58.030 WAS UNCONSTITUTIONAL ON ITS FACE BECAUSE FEDERAL LAW DOES NOT CONTROL COMMON LAW ISSUES AT THE STATE LEVEL. | 8 |
| B. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE RESPONDENT’S CONFESSION WAS NOT ADMISSIBLE. | 11 |
| VI. CONCLUSION..... | 14 |

TABLE OF AUTHORITIES

Page

Cases

City of Bremerton v. Corbett, 106 Wash.2d 569, 723 P.2d 1135 (1986). 10
In re the Dependency of A.S., 101 Wash.App. 60, 6 P.3d 11 (2000)..... 14
State v. Opper, 348 U.S. 84 (1954)..... 6, 7, 9, 10
State v. Ray, 130 Wash.2d 673, 926 P.2d 904 (1996)..... 5, 6
State v. Walker, 157 Wash.2d 307, 138 P.3d 113 (2006) 9, 10

Statutes

RCW 10.31.100(1)..... 9
RCW 10.58.030 1, 5
RCW 10.58.035 2, 4, 5, 7, 8, 9, 10, 14

Other Authorities

RAP 12.2 (2006)..... 12

I. ASSIGNMENTS OF ERROR

- A. THE TRIAL COURT ERRED WHEN IT FOUND THAT RCW 10.58.030 WAS UNCONSTITUTIONAL ON ITS FACE.**
- B. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE RESPONDENT'S CONFESSION WAS NOT ADMISSIBLE.**

II. ISSUES PRESENTED

- 1. IS A STATE LEGISLATURE ABLE TO SET A DIFFERENT CORPUS DELICTI STANDARD THAN THE STANDARD SET FORTH BY FEDERAL CASE LAW?**
- 2. WAS THERE SUFFICIENT EVIDENCE OF THE TRUSTWORTHINESS OF THE RESPONDENT'S STATEMENTS FOR THEM TO BE ADMISSIBLE AT TRIAL?**

III. SHORT ANSWERS

- 1. Yes. Corpus delicti is not a constitutional right and therefore the state legislature can set its own standards even if they are lower than the federal standard set by common law.
- 2. Yes. RCW 10.58.035 requires a consideration of trustworthiness taking into account subsections (a), (b), (c), and (d). All factors need not be present and the list is not exclusive. Because factors (b), (c), and (d) were present, there was a sufficient showing of trustworthiness of the respondent's statements for them to be admissible at trial.

IV. STATEMENT OF THE CASE

On September 27, 2005, the respondent, Keith Ian Dow, was charged by information with rape of a child in the first degree. CP 1-2. On March 31, 2006, the trial court heard a motion to exclude the complaining witness's statements. At a prior proceeding, the court found that the complaining witness was incompetent and her statements were therefore suppressed.

On April 3, 2006 the state amended the charge to child molestation in the first degree. CP 3-4. The court allowed the amendment and the respondent pled not guilty to the amended charge. A hearing then took place for the purpose of determining whether to allow the respondent's statements to be admitted at trial pursuant to RCW 10.58.035. RP 3-45. Prior to the commencement of the hearing, the trial court indicated that among the materials presented was a transcript of the defendant's written statement. RP 4. App. A.

The State's only witness was Detective Debra Johnson of the Longview Police Department. Detective Johnson testified that she had been a police officer for over six years, and at the time of the incident involving the respondent she was assigned to the detective unit. RP 5. She testified that she was assigned follow-up investigation involving Mr.

Dow and that she had never met the respondent prior to this investigation. RP 5, 9.

Throughout the course of her investigation Detective Johnson discovered that the victim, Jane Doe, was three years old and the respondent was born in 1979. RP 8. She was also able to determine that the respondent and the victim had never been married. RP 8.

Detective Johnson also testified that she interviewed the respondent at his mother's apartment on September 29, 2005, accompanied by Detective Tim Deisher of the Longview Police Department and Detective Gibson from the Gresham Police Department. RP 6, 9. The interview that took place was tape recorded and subsequently transcribed. RP 6.

When asked to describe the nature of the interview, Detective Johnson stated that she felt the respondent was very cooperative and that it was a very comfortable environment. RP 6. She went on to state that nothing coercive or hostile took place during the interview. RP 6. At the conclusion of the interview the respondent was placed under arrest. RP 9.

Detective Johnson testified that the respondent and the victim's mother were in a dating relationship and were thinking about getting married. RP 9. The respondent started dating the victim's mother

sometime in March of 2005 and moved into her house on April 5, 2005.

RP 9.

On direct examination, Detective Johnson stated that the respondent had left the state during the course of her investigation. RP 8. On cross-examination, Detective Johnson stated that the interview on September 29, 2005 occurred as a result of the respondent contacting her and suggesting that they sit down to discuss the case. RP 10. She further testified that there was no indication that he was eluding the police. RP 10-11. On re-direct examination, Detective Johnson stated that the respondent indicated that he ran, and that he was high, was stupid, and ran and all he wanted to do was get out until somebody told the victim's mother what happened. RP 11. The respondent stated, "I couldn't, I couldn't, I couldn't...I just didn't wake up one day and decide I'm going to molest a little girl, you know?" RP 11.

At the conclusion of Detective Johnson's testimony the State asked the court to admit the respondent's written statement for purposes of the hearing. RP 12. For purposes of the record, the court admitted the defendant's statements to Detective Johnson as Exhibit 1 for the hearing. RP 12.

The parties acknowledged that RCW 10.58.035 was a new statute and that there are no cases interpreting the statute. RP 15. The State

argued that in the case at hand the witness was held to be incompetent, it was a criminal matter, and that the facts clearly fell within the boundaries of RCW 10.58.035. RP 15-16. Accordingly, the state argued the requirements of the statute should apply to the admissibility of the defendant's statements. RP 15-16. In arguing the applicability of RCW 10.58.035, the State asserted that the legislature passed this law, overruling the common law corpus delicti rule in these particular circumstances. RP 16. The State argued that the statute set out four different criteria, that are not all encompassing, to determine trustworthiness, and that the consideration should not be limited to just these four factors. RP 16.

The State addressed the legislative history of RCW 10.58.030 and pointed out the fact that RCW 10.58.035(2)(a), which discusses independent evidencing corroborating or contradicting the facts set out in the statement including the elements of the offense, was not present in one of the original bills. RP 16-17. The State also argued that RCW 10.58.035(2)(b),(c), and (d) were all present in this case and therefore (a) is not necessary and the statements should have been deemed trustworthy based on the presence of (b), (c), and (d). RP 17-19.

Respondent argued that *State v. Ray* and *State v. Opper* should be controlling and that corpus delicti has its pinnings on the due process of

the state and federal constitution, and therefore the state statute at issue is unconstitutional. RP 20-21. *State v. Ray*, 130 Wash.2d 673, 926 P.2d 904 (1996), *State v. Opper*, 348 U.S. 84 (1954). Respondent also asserted that the *Opper* standard imposed a two-prong test requiring independent corroboration of the crime confessed. RP 34.

The trial court began its ruling by stating that it did not believe there was anything preventing the legislature from modifying the corpus delicti rule because the rule itself is not a constitutional standard. RP 39. The court further stated that it is not a situation where the Washington Constitution dictates some higher standard than the Federal Constitution. RP 39. The court also stated that this has been a federal standard for over fifty years and that Washington cases that have reaffirmed that standard certainly have not spoken of it in constitutional terms. RP 39

The court noted that the first statement the respondent made was to the police and that it was made after proper advise of Miranda, was recorded, and there was no indication of overbearing or coercion on the part of the three present officers. RP 40. The court indicated that the statement certainly indicated trustworthiness in those circumstances. RP 40. The court also found that the respondent's statement to the victim's mother was trustworthy based on their close relationship prior to the incident, the fact that there was no motive for her to fabricate what the

respondent told her, and the fact that what the respondent indicated to her was consistent with his recorded statement to the police. RP 40.

The court went on to discuss whether the standard set by *Opper* was a constitutionally established minimum standard. The court stated that, “to the extent that 10.58.035 purports to set a standard for admissibility which would not meet that minimum standard of *Opper*, I think it violates the Federal Constitution’s Fifth Amendment guarantees, so I think that the only way that statute would be constitutional is if I were to read that independent evidence requirement into it.” RP 41. The court found that in looking at the case at hand, there is no independent evidence.

Additionally, the trial court held that, “10.58.035 cannot set a standard below the *Opper* standard, and independent evidence would have to be required under our traditional corpus delicti standard, or under the *Opper* standard, the statements here do not meet those minimum standards because of the lack of independent corroboration, and the statements themselves, in the absence of any other evidence, do not provide prima facie evidence of the elements of the offense, so on those bases, I will grant the motion to dismiss.” RP 41-42. The State conceded that without the respondent’s statements they could not proceed. RP 42. The trial court dismissed the case and the State filed a timely notice of appeal. CP 5-13.

IV. ARGUMENT

A. THE TRIAL COURT ERRED WHEN IT FOUND THAT RCW 10.58.030 WAS UNCONSTITUTIONAL ON ITS FACE BECAUSE FEDERAL LAW DOES NOT CONTROL COMMON LAW ISSUES AT THE STATE LEVEL.

RCW 10.58.035 provides as follows:

- (1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.
- (2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:
 - (a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;
 - (b) The character of the witness reporting the statement and the number of witnesses to the statement;
 - (c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement and/or
 - (d) The relationship between the witness and the defendant.
- (3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted to the court shall issue a written order setting forth the rationale for admission.
- (4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

RCW 10.58.035.

The trial court began its ruling by stating that it did not believe there was anything preventing the legislature from modifying the corpus delicti rule because the rule itself is not a constitutional standard and that it is not a situation where the Washington Constitution dictates some higher standard than the Federal Constitution. RP 39. The court also stated that this has been a federal standard for over fifty years and that Washington cases that have reaffirmed that standard certainly have not spoken of it in constitutional terms. Nevertheless, the court went on to ultimately decide that the standard set by *Opper* was a constitutionally established minimum standard and setting a lower standard through State legislation violates the Federal Constitution's Fifth Amendment guarantees.

The Appellant asserts that the first portion of the trial court's reasoning is an accurate assessment of the law and should lead to a determination that RCW 10.58.035 is in fact constitutional. A state legislature is able to set standards below those set by federal common law so long as it does not involve a constitutional right.

State v. Walker involved RCW 10.31.100(1), which codifies and expands the common law rule allowing for warrantless misdemeanor arrests only when the misdemeanor occurs in the officer's presence. *State v. Walker*, 157 Wash.2d 307, 138 P.3d 113 (2006). The defendant challenged the statute based on its constitutionality. In holding that the

statute was constitutional the court found that the federal constitution provides the minimum level of protection. *Id.* at 313, 138 P.3d at 117. However, the basis for upholding the statute was that the legislature might provide for infringements on personal rights “even when the authority is in derogation of the common law.” *Id.* at 316, 138 P.3d at 117. Thus, when the right being infringed upon by a statute is one derived from common law as opposed to a constitutional right, the state legislature may set its own guidelines and standards and is not controlled by federal law.

Further, “the corpus delicti rule does not have a constitutional source.” *City of Bremerton v. Corbett*, 106 Wash.2d 569, 576, 723 P.2d 1135, 1139 (1986). Because the corpus delicti rule is not a derivative right of the federal constitution, the state legislature is free to set any standard they should chose with regard to the rights afforded with respect to corpus delicti. Therefore, the state legislature in Washington is not bound by the corpus delicti standard set forth in *Opper*.

The trial court erred in finding that corpus delicti was a Fifth Amendment right and thus holding that any state legislature passes statutes impacting it must comply with the minimum standard set forth in *Opper*. It is not unconstitutional for a state legislature to set a standard different than the federal common law. Corpus delicti is a derivative of common law as opposed to a constitutional right and therefore *Opper* is not binding

upon the state legislature and does not set a minimum standard that must be followed by the states.

Because state legislatures are able to set their own standards for corpus delicti, the Washington state legislature was justified in passing RCW 10.58.035 and the statute should not have been declared unconstitutional for not complying with a federal law minimum standard. The State requests the court find RCW 10.58.035 constitutional.

B. THE TRIAL COURT ERRED WHEN IT FOUND THAT THE RESPONDENT'S CONFESSION WAS NOT ADMISSIBLE.

The respondent's statements to the police as well as the victim's mother were deemed trustworthy by the trial court and should not have been suppressed. RP 40. RCW 10.58.035 sets out factors to be considered when determining trustworthiness of statements for the purpose of admissibility and it indicates that the following non-inclusive list: first, whether there is any corroborating or contradicting evidence to the facts set out in the statement; second, the character of the witness reporting the statement and the number of witnesses to the statement; third, whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or fourth, the relationship between the witness and the defendant.

Here, the State concedes that the first potential factor showing trustworthiness is not present. However, all the remaining factors indicating trustworthiness are present. The character of the witness reporting the statement is the second factor listed for determining trustworthiness. In this case there were two reporting witnesses. The first witness was a detective of the Longview police department for over six years. The other witness to the respondent's statements was the mother of the victim, and the trial court noted that prior to the incident the two had a good relationship and she had no obvious reason to fabricate what was told to her by the respondent. Both witnesses to the respondent's statements are credible in character as well as trustworthy in their account of what the respondent told them.

The third factor of trustworthiness to be taken into consideration is the record and timing of the recoding of any statements. In this case the statement made to the police was recorded while it was being made and was observed by three police officers. Thus, a very accurate recording was obtained and it was made simultaneous to the statements being made. This is another indication of trustworthiness. The statements made to the victim's mother agreed with the statements made to the police in the recorded statement and this is also indicative of trustworthiness for both statements.

The fourth listed factor to be considered is the relationship between the witness and the defendant. In this case, Detective Johnson did not know the respondent before the incident she was investigating. Furthermore, there was nothing indicating a reason for her to desire to be anything but truthful in her conveyance of the statements as they were made to her by the respondent. The victim's mother, as noted by the trial court, had a good relationship with the respondent prior to this incident and would also not have a reason to fabricate anything that the respondent said to her.

Although the first factor to be considered in determining trustworthiness was not present, all of the additional listed factors were indicative of trustworthiness. Further, the trial court even indicated that it found the statements to be trustworthy and only suppressed them because it held the statute to be unconstitutional. RP 40. It is reasonable to believe that, had the court found the statute constitutional as the Appellant argues it is, the statements would not have been suppressed.

“The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require.” RAP 12.2 (2006). “Under RAP 12.2, appellate courts are authorized to affirm, modify or reverse a trial court without further proceedings, when doing so would be a useless act or a

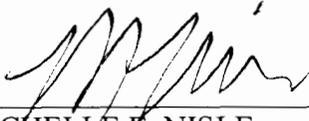
waste of judicial resources.” *In re the Dependency of A.S.*, 101 Wash.App. 60, 72, 6 P.3d 11, 17-18 (2000). In this case it would be in the interest of justice as well as a preservation of judicial resources to determine that the statements made by the defendant would be admissible at trial. The trial court has already determined the factual basis for the admission of the statements in finding that they are trustworthy. An interpretation of the law is all that is preventing the statements from being admissible at trial. Here there is overwhelming evidence of trustworthiness of the statements, thus satisfying the statutory requirement for admissibility. Therefore, Appellant asks that the statements be deemed admissible at trial.

D. CONCLUSION

Because the trial court erred in finding RCW 10.58.035 unconstitutional and in suppressing the respondent's statements to Detective Johnson and the victim's mother, the State asks that the trial court be overruled, the statute be found constitutional, and the respondent's motion to suppress the defendant's confession be denied.

Respectfully submitted this 16th day of November, 2006.

SUSAN I. BAUR
Prosecuting Attorney

By 

MICHELLE E. NISLE
WSBA # 35899
Deputy Prosecuting Attorney
Representing Appellant

Appendix "A"

Longview Police Department
Case #05-24456

Interview of: *Keith Dow*
Interview by: *Detective Deborah Johnson*
Interview date: *September 29, 2005*

Legend:

DJ: Detective Deborah Johnson
TD: Detective Tim Deisher
DG: Detective Gibson
KD: Keith Dow

DJ: I'm starting this thing. This is Longview Police, case number 05-24456. It is September 29, 2005, and the time is 1300 hours. I am here with Keith I-an

KD: Ian

DJ: Ian Dow.

KD: Yes ma'am.

DJ: And Keith, what's your date of birth?

KD: Uh, 9/21/79.

DJ: Okay, and do I have permission to record your voice?

KD: Yes ma'am you do.

DJ: Okay, and um also present are Detective Gibson and Detective Deisher. Do I have permission to record both of your voices in case you guys talk?

DG: Yes ma'am.

TD: Yes.

DJ: Okay, and I'm D-Detective Johnson and there is permission to record my voice. I'm gonna read you your Miranda Warnings first. Have you ever been read them before?

KD: Um, yes I have, a couple years ago.

DJ: The incident on I-5 thing? Is that

KD: On I-5?

DJ: Or, on I-5?

KD: On I-5, yes ma'am.

DJ: Or is that, okay,

KD: Yes.

DJ: I saw that and it doesn't look like anything happened, or,

KD: No.

DJ: Okay, um, you have the right to remain silent, do you understand that?

KD: Yes ma'am.

DJ: You have the right at this time to an attorney, do you understand that?

KD: Yes ma'am.

DJ: Anything you say can and will be used against you in the court of law, do you understand that?

KD: Yes ma'am.

DJ: You have the right to talk to an attorney before answering any questions, do you understand that?

KD: Yes ma'am.

DJ: You have the right to answer an attorney, to have an attorney present during the questioning, do you understand that?

KD: Yes ma'am.

DJ: If you cannot afford an attorney, one will be appointed for you without cost before or during questioning if you so desire. Do you understand all those rights?

KD: Yes ma'am I do.

DJ: And having those right in mind, you, it's okay that you talk to me right now?

KD: Yes ma'am.

DJ: (Unintelligible)

TD: (Unintelligible) send something, is it okay if I turn it off?

KD: Go ahead, feel free.

DG: Detective, I have a question for you.

DJ: Okay.

DG: Would you prefer a little bit of privacy?

DJ: Um, I'm, would you rather talk just a little bit, maybe these guys, you wouldn't mind if these guys go in there a little bit?

KD: Uh, it doesn't matter to me.

DJ: I just didn't want to leave 'em sittin' out in the car, so.

KD: It's kind of intimidating, three on one, but, I, you know.

DG: Why don't we at least step right inside the next room.

KD: That's fine with me.

DJ: Okay, perfect, thank you. That works, we just didn't, it'd be kind of goofy leavin' 'em sittin' out there, so it's like, well, come on in. Okay, um, tell me a little bit about yourself.

KD: I'm 26 years old, I just, uh, got out of the Army on August 23rd of this year. I went to Iraq, spent a year in Iraq, was stationed in Taji. Um, I've been in through the Battle of Faluja, the Battle of Naja, um, done a lot of crazy things over there. Um, right now I'm going through a hard time with um, substance abuse, cause I tried, I tried masking the feelings I've had of grief and loss and everything with drugs and it just spun me in a circle where I wasn't working and I didn't want to do anything other than just get high. And now I'm trying to get my life back in order. Um,

DJ: What kind of substance, substances are you using?

KD: Um, I'm, I'm not using anything right now, other than my prescription drugs, that the VA prescribed me. But I was using crystal methamphetamines and marijuana.

DJ: Okay. And what, what medications are you taking now?

KD: Quata, quatametaphine. It's, they're right down there. And um, and I forget the other one, their anit-psychotic, anti-depressants.

DJ: Okay, and have you been diagnosed with anything?

KD: Um, not, not of, not as of yet, other than PTSD, and but, that's about it. But they want to talk to me more. I've been to a couple counseling sessions and stuff, so they just wanted to talk to me more and work out the PSD, PTSD thing.

DJ: Right, okay. Sounds like you have a lot going on. Cause you have this thing too.

KD: Then I have this thing too.

DJ: Well tell me a little bit about um, how long were you in the military?

KD: I was in there, I was in the military for 6 years, since 99.

DJ: Okay, and what branch of the military were you in?

KD: Army National Guard.

DJ: Okay, and then how long were you, actually in Iraq?

KD: Um, 1 year.

DJ: Okay.

KD: From March of 04 to March of 05.

DJ: Okay, so before that when you were in the National Guard, was that the Washington National Guard?

KD: Uh, no ma'am, Oregon National Guard.

DJ: Oregon National Guard. Where you actually um, actively deployed or were you act, just kind of like here state side?

KD: Um, I was here state side. I volunteered to go over to Iraq. They needed some volunteers, they were short about 400 people or something, so I volunteered to go.

DJ: Okay.

KD: Changed my job, I was 12 bravo combat engineer, and then I changed over to the infantry.

DJ: Okay, what about, where um, where'd you grow up at? Were you born?

KD: I was born in San Diego, California, um, grew up in Santi, which is a suburb of San Diego, east county. Um, went to Santana high school, dropped out three days into my sophomore year. Um, when I turned 18 I went and got my GED and um, came up here, joined the Army, got married, lost a kid, uh, started using drugs again, lost my wife, um.

DJ: How'd you lose a kid? What happened?

KD: Um, my wife had an incompetent cervix and basically what happened was is that the water sack went down into the birthing canal and when the uh the nurse did a um, a cervical exam because she was spotting, he accidentally ruptured the, the sack, and our baby suffocated inside.

DJ: Bummer. Now you have another baby too right?

KD: Yes ma'am, 3 year old daughter.

DJ: Okay, and what's her name?

KD: Her name is Desiree.

DJ: Desiree, okay, do you get to see her then?

KD: Um, on Mary's terms. When we went to court.

DJ: And Mary's your, your ex-wife?

KD: Mary is my ex-wife, yes. Um, I haven't seen my kid in 3 weeks, almost a month.

DJ: Okay.

KD: Um, the whole time I was in Iraq, I never received one bit of information, how she was doing. She had a surgery that I didn't even know about. Um, Mary is very controlling with that situation. She will only let me see her on her terms. She wouldn't let her stay the night. She went, you know, sometimes me and Mary's mom would have to sneak little visits and stuff without Mary knowing about it and this and that and the other. And uh, you know, I don't know.

DJ: Was CPS involved in the visitations or?

KD: No.

DJ: Or in court, family court, or anything like that?

KD: No ma'am.

DJ: Okay. And your ex-wife lives? Here or?

KD: In Kelso, she actually lives in Castle Rock.

DJ: In Castle Rock, okay, okay. Um, and now tell me about your relationship with is it Cecilia?

KD: Cecilia.

DJ: And how long have you guys been together? And how did you

KD: Um, we met, we were next door neighbors when Desiree was born. Me and Mary moved out of her parents house and we moved into an apartment complex on what was that 8th street, or 9th street, in Longview. But her and her husband had a daughter, Kieyana, which is 2 days younger than Desiree, so they're 2 days apart. Well we did family things, and, and hung out and stuff like that, and then uh, me and Mary had our falling out. We probably lived there for maybe 8 months and then we separated. Gabe was never around, that's C.C.'s ex-husband. Um he was

DJ: And C.C. is Cecilia?

KD: Cecilia, yes, yeah, C.C. is Cecilia.

DJ: Um, Gabe wasn't around, he was doing drugs, not working, stuff like that, so um, Mary was gone and I didn't get to see Desiree that much, so um, me and C.C. hung out a little bit more. We'd go to the beach together, hang out, um, play with the kids, stuff like that you know. And then uh, I moved back down to Portland and uh got another girlfriend. She moved to Hood River with her husband, and uh, we visited a couple times. And then uh, I went to Klamath Falls to go firefighting and that was the last time I heard from her, and then about a year and a half later, almost 2 years later, I was in Naja, just got back from fighting for a month straight and uh, there was a letter on my bed. She went out looking for me, and found me in Iraq, and then when I came back to Taji, I called her and said hey, I'm coming home for leave in a couple weeks, you know, you wanna hang out and stuff, and then as soon as I came home it was like, it was just instant, we just automatically hit it off and started a relationship and jumped right into it. I went back to Iraq 2 weeks later and then came home, and as soon as I came home, I moved in with her and, and

DJ: That's when you came home in August?

KD: Uh, no, when I came home in uh, in uh March is when I moved in. I came home in September, end of September, beginning of October, is when I came home for leave, for 2 weeks, and then I came home for good in March, March 17th.

DJ: March 2005?

KD: Yes ma'am.

DJ: Okay, so you've been livin' with her since March 17th? But you guys have been kind of like, sort of dating or, since

KD: No, we had plans of getting married, you know, I was gone for 5 months, from when I came home for leave, went back, so we talked on the phone, wrote letters, email, all that stuff. Um, we talked about getting married, um, everything else you know. It felt like we were soul mates you know, we felt like this was right, this was the way it was supposed to be. So when I came home, just jumped right into the relationship um, moved right in with her, and uh, you know, I said I was gonna take a vacation 1 month to 3 months, uh, we went down to California, went and visited her, her ex-husbands mom in uh, in Aberdeen, you know, just hung out a lot.

DJ: Okay.

KD: Had a good time.

DJ: Okay. What about your, tell me about your relationship with um, Kieyanna.

KD: Kieyanna um, CC wanted me to take the role of Kieyanna's dad. Kieyanna's dad, Kieyanna knows her dad very well, loves her dad very well, but her dad wasn't there, you know. He'd only drop in every now and then and he didn't pay child support, he didn't do anything else. I love Kieyanna like my own daughter, I would do anything for her, you know, um, I've known her since she was 2 weeks old you know, I used to play with her and uh, you know, be a dad to her you know. Her family used to call me stunt dad, long time ago, before we even started dating or anything, when we lived next door to each other, because I came into that role you know, I was dad. So that's, that's pretty much the.

DJ: Okay, what kind of, what kind of kid is she?

KD: She's, she's a good kid. She's really, really smart, um, hyper-active, she likes to bounce off the walls, but a lot of 3 year olds are like that, you know. Um, uh, she listens pretty good, um, she, her and my daughter are probably the 2 smartest 3 year olds I've ever known. Um, like Kieyanna can spell her name, she knows the whole entire alphabet, she can uh, count to 20, maybe even higher now, I don't know. Uh, she can count to 10 in Spanish. CC was teaching her 10 in French, so

she's a very, very smart child. She knows, she knows a lot of things. Very curious too.

DJ: Okay, and um, you know pretty much why I'm here today, you know about what the, what everything that was said.

KD: I know some things, but I don't know everything. I don't know exactly what was said, or anything else, um, I know what happened, and I'm more than willing to talk about it, but from what I understand, there's an accusation against me that I molested her. And that is just absolutely ridiculous, it's a complete misunderstanding, and, I should've been more truthful in the beginning but I was scared and paranoid, and I didn't know how to handle the situation I was in and I just ran from it.

DJ: Well tell me about what happened.

KD: Okay, that morning CC had a Red Cross class, so she got up, probably around 8, got ready and she said good-bye to me about 8:30 or so, um I waited about a minute until I knew she was gone, and I got up and I went to use the bathroom, took a leak, and then, sorry,

DJ: That's okay.

KD: Um, went and used the bathroom, and then uh, our doors are connected, the bathrooms in the middle of the two rooms. So I opened up Kieyanna's door and I peaked inside to see if she was still sleeping, she was. Um, I went into the kitchen, got into the kitchen drawer, pulled out some tin foil, and I went into my room and I smoked a couple hits of meth and a couple bong hits. Um, something I'm not proud of but I did it. And then um, I got back into bed and I started to masturbate. I was all by myself.

DJ: What were you wearing at the time?

KD: I wasn't wearing anything. I was completely naked.

DJ: Do you normally sleep

KD: Me and CC, me and CC sleep naked, you know, that's sometimes I wear boxers, sometimes I sleep naked, just, you know, it depends. I was completely naked and I didn't have any covers over me, and I was masturbating. Um, that went on for about maybe 5 minutes or so, maybe a little bit less, I'm not sure, um, and then I heard Kieyanna call for her mom and when I heard it, I opened up my eyes cause I had my eyes closed and I looked over at the bathroom door and there she was, standing there in the bathroom door, looking at me.

DJ: So were you laying down on the bed?

KD: I was laying down on my back, yes ma'am. And she was looking at me, and she's only maybe 5 feet away from me, and she's standing right there in the doorway, and I didn't hear her come through the doors and everything else, cause the doors weren't closed all the way, they were just kind of ajar a little bit. And I didn't hear her come in until she said mommy, and then I was like, oh crap, you know, it scared the hell out of me, I pulled the sheet over me, and uh, she started asking me what I was doing, um, Keith, what are you doing? Why are you naked? Why is your wee wee pointed straight up? I didn't know what to tell her, I was freaked out, you know I'm really embarrassed. Um, so I told her I only answered the question about me being naked, um and I told her well sometimes me and mommy sleep naked together, this is how mommy's and daddy's sleep sometimes. And she laughed and called me silly Keith, she does that sometimes, silly Keith and she laughed, and she hopped up on the bed, and I didn't want to yell at her and make her feel like she was in trouble or anything, make a big deal about it, I had the cover, the sheet over me, and uh, um, you know she wanted to cuddle and stuff cause she always comes in the morning and cuddles with me and CC. And uh, she wanted to get underneath the sheet with me and I said, no you can't get under the sheet with me sweetie, I need my privacy. Can you go into the bedroom and get dressed so we can go to Uncle Matt's shop and to the guitar shop, the pawn shop, I was pawning my guitar that day, for money.

DJ: Did you actually get to pawn your guitar that day?

KD: Yes I did actually go. And then she, she ran into the bedroom, I asked her for some privacy so I can get dressed and stuff, she ran into her room and I rolled over onto my right side this time, and I had my covers, the sheet over me at my waist and I was laying there, trying to collect my thoughts, you know, this little girl just came in, saw me masturbating, I'm embarrassed, I don't know what to do, or anything else, um, I'm paranoid, these, the drugs are going through me and everything else, I'm high as a kite, um, and about 20 seconds later, 30 seconds later, she comes running back into the room and she jumps up on the bed, and she's on my back leaning over me but she's naked this time, she took off her clothes, so I rolled over onto my back and she jumped up on my chest, right here, and uh, I didn't feel comfortable with her on my chest that close to me, so I picked her up and I put her in my lap, and my lap was covered, I had the blanket, the sheet right here, and I put her right there on my lap, and uh, you know, I was laughing at her calling her a stinkin' yanny, that's a nickname me and CC had for her when she was being silly or whatever, and uh, I didn't want to make a big deal about her being naked. Sometimes CC would make a big stink about it when the girls would come out of the bathroom, run around the house naked, like 3 year olds do you know, kids do that kind of stuff. So I didn't make a big deal about it, I had her in my lap and I was tickling her you know, and calling her stinkin' yanny and she was bouncing in my lap and stuff and then that went on for about maybe 30 seconds and then she said look Keith, I'm on, I'm on your wee wee like mommy, and it freaked me out, it freaked me out like I've never been freaked out

before. Kieyanna has walked in on me and CC numerous times, having sex, with no covers over us, you know, she's seen us, she's seen her mom on top, she's seen me on top, she's seen us all different positions, and different ways, and it really, really freaked me out. So, I rolled her over off of my lap, and I opened up the blinds and I opened up the window cause I needed light and some fresh air cause I was just, I was about to have a panic attack, you know, and uh, she gets down on the floor and she starts walking away and she's laughing and giggling saying that was fun, I want to play that game again, and I was, I was just thinking all kinds of crazy thoughts, like what the hell just happened, how, what, what's going on here, and um, so I told her to go into her bedroom and I'll go get her dressed. When I got up I was, I was naked, I did not have an erection though, I did not have an erection. And uh, but I wasn't fully limp neither, you know I was

DJ: So when you were, when you were laying on your side, did you continue to masturbate?

KD: No, no, no, no, I was trying to collect my thoughts, trying to you know,

DJ: So your, your penis was still erect when she came in the room?

KD: No, no, it wasn't, it wasn't erect, it was going down

DJ: 20 seconds later?

KD: You know, I was collecting my thoughts, you know trying to, you know, get myself to where I wasn't aroused anymore you know, so I could get up and go take care of Kieyanna cause now she's awake and I gotta feed her and everything else and get ready to go. Um, and so after Kieyanna um, was going to the bedroom and she said that was fun, I, I liked that game, I want to play it again, I told her to go to her room and get dressed, while I was getting dressed and everything else. I put my clothes on and then I went into her room and I got her dressed, fixed her a bowl of oatmeal, and then we went to Matt's shop, and, and to uh, and to the pawn shop. When CC got home, as soon as she got home I wanted to tell her everything. I, I so wanted to tell her about the drugs, about me masturbating, about everything, but I just couldn't do it. I couldn't do it, I froze up. I froze up and I didn't know what to say and I didn't know what to do. I panicked, I start rambling all kinds of crazy things, leaving things out, I didn't tell her that I mastur-, was masturbating and Kieyanna had walked in on me. I didn't tell her that, that uh, she had jumped up on my chest and I put her in my lap. Um, I didn't tell her about, what, the things that she had said, and stuff like that. Basically I, I just, was, was just trying to tell her, I kind of just mixed it up, I was telling her the truth, but I was leaving things out you know, and that was my biggest mistake. If I would have told her the truth from the beginning, and if I wasn't high on those drugs, I wouldn't have been so damn paranoid of what she would of thought. She hates drug use. She hates, she hates her husband, her ex-husband for doin' drugs. I was completely scared that she was gonna just flip out

on me for using meth and and everything else, not coming to her, whatever. But I never touched Kieyanna, I never asked her to touch me. I never talked dirty to her. I never told her to keep it secret or anything like that. I'm not a child molester, I'm not a petifile, I'm not attracted to children. I'm a father, if anybody did anything like that to my child I would probably kill them. I've killed people before in war, I would have no problem doing it to somebody who did that to my child. You know, that is absolute violation. I had the covers over me, I had just freaked out, you know. What, what does a person do in this situation? I don't know. I've never been in a situation like this before. I've never felt like, like this. I felt ashamed, and dirty and guilty and disgusted with myself for doing drugs, for um, you know, having a little girl see me masturbate, uh, it was pretty embarrassing and pretty hard for me to deal with you know, and so I just left. I left and the next day I called CC and CC said that um, she had talked to Kieyanna more and Kieyanna told her other things, and she wasn't going to press charges, or anything else like that, she just wanted her \$200 for my truck pay, for um the Les Schwab payment, and uh, I said okay, that's fine, know that I didn't molest her, know that I didn't do anything like that, and I'm sorry. The next day I tried calling her again because I came down off the drugs, um, I started thinking more clearly and I wanted to tell her everything. Well she didn't pick up the phone and so I left a message saying that uh, hey CC you know I need to be truthful and honest with you, I've been using drugs for, for this long, since I've been home, um, I didn't you know, do that to Kieyanna, cause she, she already thought that I did, you know. She already had it in her mind that I did this. And I was like, no it didn't happen like that, it's a misunderstanding, um, and then, a couple days later I get a phone call from you, my step-dad says that a detective wants to talk to me. And you know, how, how do I fight something like this? Ever since this has happened I thought about suicide, I've thought about just running away, whatever, just so I don't have to deal with this. I've fought for so long, all my life I've fought to get away from bad things, everything else, and I always get sucked back into it. And I know it's my own fault, and that's why I'm trying to get help now, because I never um, sought out for professional help. I'm trying to get professional help now. And, I don't know, I'm, I'm truly sorry for doing the drugs, I truly, truly am, but I did not touch her. I did not do anything like that.

DJ: Let me tell you what Kieyanna told me. 'kay?

KD: 'kay.

DJ: Some of it's kind of similar to what you're saying. Um, she calls her, she calls her vagina her go go, I don't know if you already knew that. And then she calls your penis um, a wee wee. So she said that, is it okay if the neighbors are listening, or does that, does that bug you?

KD: I don't, I don't have nothin' to hide.

DJ: Uh, she said that you had touched her go go on your wee wee. And that you had rubbed her back and forth and she actually demonstrates how she was um, rubbing back and forth on, on your wee wee. And she basically is saying that you put your penis, and she says, it doesn't hurt, which you know, I'm glad that, that that was the case and that there was no, like necessarily, into vaginal vault. You know how you, you know how girls have a, what they call labia, I don't know how much you

KD: Right, right.

DJ: That's the outside part, and then you have like

KD: Right, I know.

DJ: where the vagina goes in. She's saying you went inside where the labia was, and there wasn't anything between you guys in terms of the sheet, and I actually didn't even give her that option. I asked her what was between you, the sheet, or a blanket or what, and she says no, there was nothing between us. It was just my wee wee on his go go, or her go go on your wee wee. Um, and that you went inside and that um, uh, were rubbing back and forth for a couple minutes and then you stopped and said something to the effect of, hold on, let me look at my notes really quick. She first of all tells me that you didn't say anything, and then she tells, and then she said oh wait a minute, when he was done rubbing on it, he said that it was time to get up, and that to get up and basically to go get dressed. Um, so what, so what she's describing is really similar to what you're describing, but not, not exactly. And I give you, you know, you know kudos for coming forward, and being a man and talking about this, and you know, cause sometimes we all make mistakes, we all do things, that we're using drugs like you talked about, and do things we wouldn't normally do, you know, under those same circumstances, and we all are human and we make mistakes, and there comes a time when sometimes we get caught, sometimes we don't. And unfortunately, when we get caught, you know, you know, its the brave thing to do is to stand up and say you know what, I screwed up, um, you know, I wish this never happened, I wish I could take back those, probably less than 3 or 4 minutes, I'm, I'm assuming. Um, you know, for whatever reason, um, you know, so, so she's kind of giving me a different, a different version, and she's, she's really, like you were talking about, a smart little girl. And I believe what's she's telling me. I mean, she's, she's really right on about exactly what happened. And it really matches up, I mean there's a few little subtle, subtle differences, um, you know, and she talks about you going to the window and uh, opening the blinds, or something, and she talks about your penis, your wee wee sticking straight up, you know, and she actually drew a picture, um, that demonstrates a, a you know, wee wee sticking straight up, on a like a diagram of a boy kind of thing. Um, so I guess I'm trying to figure out why she would say those things if in fact they weren't, you know they weren't true.

KD: May I ask you a question detective?

DJ: Sure.

KD: When was this complaint filed?

DJ: It was filed on, it was like 2 days after this incident, and she was taken to the doctor. Yeah, it was on the, it was on the 11th, so it was 2 days after the 9th, which apparently is when she was left with you.

KD: Okay, that's when I told CC that I was using drugs, 'kay. There was a sheet between us, alright. I did not try to penetrate her; I did not try to do anything else like that.

DJ: Is it possible that you accidentally got, you know if she's jumping around in your lap, and your penis is still sort of half way erect, is it possible that you'd, you'd get in between that labia just a little bit?

KD: Maybe. I don't think so, because I would have felt it, and

DJ: And you're a guy. I mean, I know enough about guys anatomy, talked to enough people, you know guys, and I mean, guys, you know, you can, especially if you're masturbating, you're using the drugs, and she's rubbing on ya, I mean that might be an exciting kind of thing, and then you realize you know, she's rubbin' on ya, and you realize, oh wait a minute, and you had the, you were good enough to stop. I mean, it would have been tempting I think in your situation to go ahead and you know, to do something more than that, especially on the drugs, and you didn't do that, you stopped.

KD: And I understand what you're saying, and to tell you the truth, yes, my body did, start to react to it, okay, but I didn't let it go that far you know. When she's

DJ: She said it didn't hurt her.

KD: When she said that, look Keith I'm on your wee wee like mommy, that is what triggered me, said, whoa, whoa, there's something really wrong here you know, this is not right. But there was a sheet between us, 'kay.

DJ: Why do you think she'd say there wasn't anything there?

KD: Well, you want me to be perfectly honest?

DJ: Sure.

KD: Uh, I think that CC, see, like my ex-wife, 'kay, my ex-wife knows the only way she can get to me is through my daughter. The only way CC knows she can get to

me is through my daughter, without me ever being able to see my kid again. 'kay, what's the perfect way to make me not be able to see my kid again?

DJ: You know, I don't, you know what, I don't believe that, but you know why? Because when I told CC, cause CC believed you, in terms of the blanket being there, she wasn't real worried about there being any kind of you know, any kind of possible injuries to her daughter. Didn't even think she needed to go to the doctor or anything like that. And when I told her that her daughter had disclosed to me, and I tell you what, when I talk to her we ask very open ended questions, we're very careful about how we question children because you can lead children to um, say certain things if you're not careful. I was very careful how I interviewed her, and I know that her mom had never told her anything of the matter. In fact I think mom would have preferred if she would have said that there was a sheet there, cause the way that CC reacted when I told her that, is she started to sob, and bawl, and was very, very upset about it. And so her reaction, you know, was complete, she just thought that this was all it was, that there was a sheet there and that was it. And uh, Kieyanna was very clear, you know, and like I said, I even said, was there a sheet or a blanket or what was between ya? And she said nothing was between me. And I went back to that and asked her again you know and she said nothing, it was his wee wee and my go go. She was really clear about that, and she didn't, all the rest of the interview was really consistent with what she said, in terms of how, you know, she knows like, stuff. You know what I mean, she knows the difference between a truth and a lie. You know, when I asked her, well just, I asked her about a color crayon that was green, it's actually purple, is that a truth or a lie, she was able to tell me, that would be a lie because that's a, you know, this color crayon. Um, she's a smart little girl like you said, and I, and I believe what she's, what she's saying in terms of that, and I believe that you know, like we kind of talked about before, she says that it didn't hurt, you know, and that's a good thing, because a lot of times, these things hurt. I've interviewed hundreds of people that have done similar things or you know, it's not like, it's not like you flat out stuck your penis inside her or did something that was you know, really horrific or made her bleed, or tore her hymen, or did anything that was like that. I mean, I think you got carried away in the moment but then you were able to stop yourself. Which is, is huge kudos to you, I mean, that you could do that. Cause a lot of people couldn't. Do you understand what I'm saying?

KD: I, I do understand what you're saying.

DJ: Especially with the drugs, and with the situation, and already being excited and erect before she even came in the room. You know, and the circumstances of the whole thing. Um, you know, I don't know what, uh, you think what you did was wrong?

KD: Um, I feel that I was wrong for doing the drugs. I felt that I was wrong for having CC trust me with her kid, and you know, I drove around high, something could

have happened terribly wrong to her. I do feel wrong for that. At the time, and even still now, do I feel like I molested her? No, I do not feel like I molested her. Do I feel wrong and guilt? Yeah, in a way I do. Because, I mean, uh, I don't know, it's hard to explain. I was just fucked, I apologize,

DJ: It's okay.

KD: Sometimes it comes out. I was high, and I was stupid, and I ran, and you know, uh, all's I wanted to do was get it out and tell somebody, you know, tell, tell CC, exactly what happened, but I couldn't, I couldn't, I couldn't, I couldn't, you know. I just didn't wake up one day and decide, oh I'm gonna molest a little girl, you know, I, that's not me, that's not the way I am. Like when I was in Iraq, the best gratification I got over there was helping those children, you know, because children are the way of future. I have a beautiful little girl and I lost a beautiful little girl, and I wouldn't want anybody to go through something like that, you know.

DJ: Have you ever been accused of anything like this in the past?

KD: No ma'am.

DJ: Okay.

KD: No ma'am.

DJ: Nobody's ever suspected or brought up anything like that?

KD: No ma'am.

DJ: Okay.

KD: No. As a matter of fact, one thing that I heard, um, my 16 year old cousin Tia told me is that uh, Mary, my ex-wife Mary, and CC had gotten together and tried gettin' Tia to say that I had done this to her and Tasha, her sister. Which is just absolutely, I mean, CC's going around telling everybody, she's told my best friend, she's told my family, she told everybody that I did this to her. You know, she hasn't even given me a chance to even explain anything or anything else, she just automatically thrown me to the lynch mob to get people to listen to her and Keith is gone, he's runnin' away, look he ran down to his mom's house, you know. He's lied to me about this, he's lied to me about that, he's lying about this, everything else. Keith's a bad man, you know, um,

DJ: Well, and I don't think, I don't know, you know, if it's necessarily that you're a bad, that anybody thinks that's you're a bad man. I think it's just that you made a mistake at a period of time, you know, your situation, whether it be circumstances got kind of carried away and what not, and it's something that just, that happened,

that it's hard to take back, cause it's already been done and it's out there. You know what I'm saying?

KD: I, I do know what you're saying, I understand what you're saying, I did not molest her. There was a sheet between us. I did not touch her.

DJ: What do you think, what do you think should happen from here?

KD: Ma'am, I don't know. I want to get my life back on track. I want to become a paramedic and help people. I want to get these images out of, of dead bodies out of my head. I want to deal with my brothers that have died over there in the war. I want to deal with losing two women that I love. I loved Mary with all my heart, I loved my daughter with all my heart. I loved CC with all my heart. I love Kieyanna with all my heart, and I cannot ever have it back again, because of my addictions, because of my own self misery, because of my own self destruction. I, I need to cope with that, I need to deal with it, otherwise I'm just gonna fall apart. You know, it's up to you, you know, you're, this is your job, 'kay, I can't say, you know oh, just let me go, or oh, throw me in jail, it's not my decision. Whatever feels right to you is what needs to be done. I want help though, that's why I'm going to my counseling meetings, that's why I'm taking these pills that make me a zombie all day long, and uh, talking to veterans and everything else, because I don't want to go back to the drugs, and I don't want to be just another one of those vets standing on the corner with a sign asking for help, you know. I want to be a functioning person in this society, and I know I can be, I just need help. I really, really do need help.

DJ: Okay, what do you think um, have you ever been in a situation similar to this before?

KD: No, no ma'am. I mean, if, if I had, I would already, done, did, said something about it, you know. This situation made me feel so inappropriate and uncomfortable that I came out and said it you know. I didn't tell Kieyanna to keep anything secret. I didn't tell her you know. No, no, I, I wanted to get it out in the open, I just didn't know how to do it, and when I tried, my mouth started going one way, and my brain started going another way, and they just didn't meet together you know, and that happens sometimes. I am truly sorry for it, I wish I would of came out and told CC the truth, and been completely honest about it, you know, cause I didn't tell CC that Kieyanna was on my chest and I put her in my lap, I didn't tell CC that I was using the drugs, you know, there was a lot of things that I kept from her, and then when it all came out it made me look really bad, you know, I, I can't take it back.

DJ: Did you ever, did you ever finish masturbating? Did you ever have any semen that came out?

KD: No, no, I didn't ejaculate, I didn't do anything.

DJ: There's not gonna be like any, like even a drip or two of semen inside um, Kieyanna's underpants after she put 'em back on?

KD: No.

DJ: Like that could have rubbed off on the outside of her or anything like that?

KD: No.

DJ: And what about um, the, I'm still not, I'm still trying to figure out why Kieyanna would say that about the sheet thing. And I don't know how big of a deal it is. I think there was still you know, that chance when she's

KD: I don't know, she did see me naked, 'kay, she seen me completely naked, twice that day, once when I was masturbating and the other time when I got up, 'kay. Maybe she's saying it because of that, because she did see me naked.

DJ: And you didn't have any ejaculant, not even like pre, pre-ejaculant or anything like that, that you knew of that could of possibly?

KD: Not that I know of, you know, but I was masturbating, and that stuff does you know, come out, but I did not have an ejaculation you know, I didn't.

DJ: Now have you, when you, when you masturbated, I know these are hard questions but I have to ask them because that's my job.

KD: I, I understand.

DJ: So, um, when you were mastur, when you masturbate, have you ever had fantasies about children?

KD: No.

DJ: while you masturbate?

KD: No.

DJ: Any concerns like that you've had about yourself?

KD: No.

DJ: Cause sometimes people have weird fantasies and there are things we need to work on to help them get past it so this doesn't happen again.

KD: No ma'am, when I masturbate, I usually look at porn. Or I think of that kind of a situation.

DJ: And pornography, meaning what kind of pornography?

KD: Well, you know, magazines, movies, all over age.

DJ: Adult people?

KD: Adult people, of course, you know.

DJ: Not animals, or anything?

KD: Nah, nah, nah. I'm not into no freaky stuff. Um, yeah, I never thought about children like that you know, I, I changed their diapers, I bathe 'em, you know, nothing ever like that.

DJ: What about later in the day, did you ever go back and finish masturbating?

KD: No I didn't.

DJ: Okay.

KD: No.

DJ: Okay. Do you have any questions?

KD: Um, no. How's, how's CC doing, I guess? How's Kieyanna?

DJ: Um, I think they're doing okay. You know, Kieyanna was seen at the doctor, um you know, and they have, you know, their, their things, and she had told the doctor a real similar version of the, of things. Um, she's a really smart little girl man. She's able to just, you know, to remember things and repeat them, and it's just pretty impressive.

KD: I, I know she's a smart little girl.

DJ: Okay, um, what my job is Keith, is to investigate these cases, and then basically what I do is I typically, I interview you know the people that um, are the alleged victims. I interview people that are the alleged you know, perpetrators and then I interview possible witnesses and people. Is there anybody that I could talk to kind of on your behalf about this that would shed better light in your area of the world here?

KD: Um, as far as a, like a character witness?

DJ: Sure.

KD: Or?

DJ: Yeah, we are, anybody that knows anything about the case that you've talked to.

KD: Um, my cousin Tia.

DJ: Okay.

KD: Um, 360

DJ: (Unintelligible)

KD: Uh, no, Tia Hicks.

DJ: Okay.

KD: Um

DJ: 36

KD: 501-6533.

DJ: Okay.

KD: And she basically considers me her older brother. Her mom, my aunt Janette.

DJ: Would she be a good person too?

KD: Oh yeah. I watched her kids for many years. Let's see here.

DJ: With the same number?

KD: Uh, no ma'am. Let's see here, 971-570-4206. Now she lives in

DJ: What

KD: She lives in Portland.

DJ: It's not a 36, or 503 number?

KD: No, not, this is her cell phone number.

DJ: Oh, okay. It's 975-570-42

KD: 971-570-4206

DJ: Okay, gotcha. Okay, who else?

KD: Um

DJ: Anybody?

KD: Well, my mom, or you know, really I don't have any friends, my best friend Patrick, who I went to war with um, I called him in told him about it about 5 days later, but I think he kind of took CC's side for some reason cause he hasn't called me back, and I don't, I don't know, um, I guess, I guess you could call him.

DJ: What's his number?

KD: His number is 360-931- 931, 931-9550, I think. Come on out you. It is 931-9550.

DJ: Okay, and how, how are you feeling in terms of, I know you mentioned earlier that you've been kind of suicidal at one point? How are you feeling about all that now?

KD: Well.

DJ: You don't feel like hurt, you feel like hurtin' yourself?

KD: I think about it, but I wouldn't do it. You know, um, if I was gonna do it I would of already done it. Um, but it does cross my mind, you know, I have a lot on my plate right now. Um, it's really hard dealing with coming back from war. I don't know if you've ever had to use your weapon before, but it's tough to take somebody's life and deal with that and think about their families or what kind of person they were, it's tough to, it's tough to see your friends get killed. I mean, not just killed, but to where you can't even identify 'em, you know, uh, it's tough, it's really tough for me to deal with this right now. And um, coming off the drugs and really wanting to go out and get high but knowing that everything that I'm working for right now to get better, if I did that I would just, you know, put me back at square one, and what does that make me? A failure again. Um, I, I don't think I'm gonna hurt myself. I will be honest, I do think about it sometimes, and I've told this to my doctors. I do think about it, the crazy thoughts do pop in my head, but I would never, I wouldn't act upon 'em. Just like you know, sometimes I have crazy thoughts about doing things to other people, it doesn't mean I'm gonna do it, you know. Everybody sometimes let's their mind go you know. But, I wouldn't do it.

DJ: Okay. What, basically what I do, is I do the investigation and then we refer it to our prosecutor. I've already referred this to our prosecutor and had them review it because I was concerned about us coming down here, you know, across state lines

and stuff, so I did have a warrant issued for your arrest on this, based on what Cecilia and what um, my investigation revealed. And so you are gonna go to jail today. So we're gonna go ahead, what they're gonna do is, we're gonna have Gresham Police take you here, and they'll book you into an Oregon jail. But there's a warrant out of Washington, so then they have an extradition process that we have to go through.

KD: Okay.

DJ: So I appreciate your conf, you know, your cooperation and stuff and that will reflect in my report. And um, you know, thanks for meeting us and so I wish you the best of luck.

KD: Could, could you guys do me one favor before you take me in? Could I smoke one cigarette before I go? Please?

DG: Well we're gonna let the district officer come and make that determination okay?

KD: Okay.

DG: Why don't you go ahead and stand up.

DJ: I'm gonna go ahead and turn off the tape recorder. The time is 1343.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
)
Respondent,)
v.) NO. 34802-1-II
) 05-1-01199-5
KEITH IAN DOW,) AFFIDAVIT OF MAILING
)
Appellant.)

AUDREY J. GILLIAM, being first duly sworn, on oath deposes and says: That on November 9th, 2006, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following

JAMES K. MORGAN
ATTORNEY AT LAW
1555 3RD AVE, STE A
LONGVIEW, WA 98632

CLERK, COURT OF APPEALS
950 BROADWAY, SUITE 300
TACOMA, WA 98402

NOV 17 2006 PM 12:44
COURT OF APPEALS
DIVISION II
BY _____

each envelope containing a copy of the following documents:

- 1. BRIEF OF APPELLANT
- 2. Affidavit of Mailing.

Audrey J. Gilliam
17

SUBSCRIBED AND SWORN to before me this November 9th, 2006.

William J. [Signature]
Notary Public in and for the State
of Washington residing in Cowlitz
Co. My commission expires: 12/14/09