

NO. 37618-1-II

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

In re the Detention of:

CASPER ROSS,

Appellant.

RESPONDENT'S OPENING BRIEF

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FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2009 JUN 19 PM 4:54

09 JUN 23 AM 11:43
STATE OF WASHINGTON
BY  DEPUTY
COURT OF APPEALS
DIVISION II

ORIGINAL

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I. ISSUES PRESENTED

- A. Was There Sufficient Evidence To Support The Court's Finding That Appellant's Less Restrictive Alternative (LRA) Should Be Revoked When Substantial Evidence Was Presented At Hearing?**
- B. Were Appellant's Due Process Rights Violated Such That The Order Revoking His LRA Should Be Reversed?**

II. STATEMENT OF THE CASE

A. Procedural History

The Appellant, Casper Ross, was civilly committed in 1998 as a sexually violent predator (SVP) pursuant to RCW 71.09. RP at 17. On January 2, 2003, he was released to the Secure Community Transition Facility (SCTF) on McNeil Island. This placement was an LRA placement within the meaning of RCW 71.09.020(6), .092. RP at 17.

At the hearing, the State presented the testimony of the Administrator for the Community Services Program at the Special Commitment Center (SCC), Alan Ziegler; a former law clerk for the Attorney General's Office, Marc Bides; Appellant's community-based sex offender treatment provider, Lang Taylor; and Appellant Ross. In his defense, Ross presented the testimony of Department of Social and Health Services (DSHS) escort, John Ringener; DSHS escort, Nora Cutshaw; former SCTF manager, Dennis Pickett; and Dr. Mark Whitehill. On March 24, 2008, Judge Tollefson ruled that the State had proven by a

preponderance of the evidence that Ross had violated the LRA. RP at 438. Ross' 2003 Conditional Release Order was revoked and he was returned to the SCC where he remains today. RP at 439. This appeal follows. CP at 11.

B. Substantive History

Ross was supervised on his LRA by a treatment team consisting of: 1) a Community Corrections Officer (CCO), most recently Tela Wilson of the Department of Corrections (DOC); 2) a sex offender treatment provider (SOTP), Lang Taylor, and 3) a representative of the SCTF. LRA Release Order, January 2, 2003 (a copy of the court's order and the appendices thereto are attached to this motion as Ex. A.)

The court imposed numerous conditions on Ross as part of his LRA release. The court's conditions expressly incorporated and include Mr. Taylor's treatment rules, the DOC's conditions, and the SCTF rules for Ross. Ex. A at 5. Some of the court-ordered release conditions for Ross include:

- Engaging in treatment with Lang Taylor as required by RCW 71.09.092(1). Ex. A at 5;
- Being truthful with Mr. Taylor and members of the treatment team. This treatment rule prohibits lies of commission and omission, "and any other forms of deception." Ex. A at 5; Ex. A, App. B at

1;

- Obtaining SCTF staff permission before acquiring and possessing still photographs. Ex. A at 5, Ex. B at 3 (*see below*);
- Submitting a detailed travel plan to a member of his treatment team for any trips away from the SCTF. Ex. A at 5; Ex. A, App. B at 4;
- Maintaining a daily log, including times and locations of all activities he engages in when away from the SCTF. Ex. A at 5; Ex. A, App. B at 4;
- Seeking clarification for any rules that he did not understand. Ex. A at 5; Ex. A, App. B at 3.

On April 19, 2007, CCO Wilson submitted to the Court and the parties a notice of violation report (NOV) indicating that Ross had violated the conditions of this Court's release order. A copy of this NOV is attached hereto as Ex. B.

On April 1, 2007, Ross and his DSHS escort, Nora Cutshaw, were visiting the home of Ross's cousin in Lakewood. Ex. B. This was an approved and scheduled visit. While they were there, a Lakewood Police officer came by the home on an unannounced visit to verify that Ross was at the home as scheduled. After observing suspicious conduct, the officer filed a report, and an investigation ensued. RP at 18.

When the treatment team learned of the police investigation, Ross was confined to the SCTF and restricted to the island while the treatment team conducted its own investigation of the April 1st incident. RP at 19. On April 13, 2007, Ross was moved to the more secure SCC, a total confinement facility for SVPs, which is also located on McNeil Island. *Id.*

While Ross was at the SCC, staff asked him to provide them with a list of items from his room at the SCTF that he would like to have at the SCC. He did so. *Id.* As SCTF staff gathered up the items, they discovered a photo of Cutshaw in a bathing suit. RP at 19-20. This photo had been hidden behind a photo of Ross's daughter. *Id.* Appellant's Brief (App. Br.) at 5, RP at 142-43. A subsequent search of the room yielded another hidden photo of Cutshaw. App. Br. at 6, RP at 179-80.

On April 18, 2007, Ross was questioned by CCO Wilson about the bathing suit photo of Cutshaw. Ex. B at 2. He failed to admit to CCO Wilson that he had possessed and concealed a second picture of Cutshaw. RP at 180. He did not report possession of either photo to his SOTP therapist Lang Taylor until after they were found. RP at 104-05, 180. When questioned by Taylor, he stated that he had stolen the photographs from Cutshaw. App. Br. at 11, RP at 143. On April 18, 2007, Mr. Taylor terminated Ross from treatment. He remains at the SCC. Ex. B at 3.

SVPs residing at the SCTF as part of an LRA may leave McNeil

Island for trips to the mainland, but must be accompanied by an escort at all times. RP at 11. Escorts are called Residential Rehabilitation Counselors (RRC). *Id.* All trips must receive prior approval. *Id.* All stops must be preapproved. RP at 15. If an unplanned stop is required for a restroom break, for food, or for any other purpose, the RRC is required to notify the SCTF control of the proposed deviation. RP at 15, 200, 214.

During the investigation following the April 1, 2007 incident, the State discovered that Ross had also deviated from his scheduled off-island trips for stops at his bank and to visit his cousin and other family members (RP at 298), by withholding information from his treatment provider (App. Br. at 11, 13; RP at 152), by failing to report the deviations (App. Br. at 12, RP at 152, 153), and for failing to report trip deviations made by his escorts (App. Br. at 13, RP at 147-151).

III. ARGUMENT

Ross argues that the State failed to produce sufficient evidence to support revocation of his LRA and that his due process rights were violated by “outrageous government conduct.” The Court should affirm the revocation of Ross’s LRA because there was substantial evidence supporting the court’s findings and order, and because the doctrine of “outrageous government conduct” does not apply in this civil matter.

A. Substantial Evidence Was Presented At Hearing To Support

The Court's Finding That Appellant's LRA Should Be Revoked

The issue to be determined at an LRA revocation hearing is “whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release.” RCW 71.09.098(3). Hearsay evidence is admissible if the court finds it otherwise reliable. *Id.* The court must determine whether the person should continue to be conditionally released on the same or modified conditions, or whether his or her conditional release should be revoked and he should be committed to total confinement. *Id.*

1. The Correct Standard And Burden Of Proof For A Revocation Of An SVP LRA Are Specified By The Legislature

Ross incorrectly cites a standard of proof articulated in *Dunner v. McLaughlin*, 100 Wn.2d 832, 846, 676 P.2d 444 (1984). That standard does not apply in this case. *Dunner* interpreted RCW 71.05, the involuntary treatment act, not RCW 71.09. *Id.* at 833. *Dunner* also involved an initial 90-day involuntary commitment proceeding, and the “clear, cogent, and convincing evidence” standard elucidated in *Dunner* was based on the statutory language of RCW 71.05. *Id.* at 846; RCW 71.05.310.

The standard of proof in an LRA revocation hearing is the “preponderance of the evidence” standard. RCW 71.09.098(5)(c). The

state must prove that the “person did not comply with the terms and conditions of his or her release.” *Id.*¹. The quantum of evidence in SVP commitment hearings is examined under the criminal standard. *In re the Detention of Thorell*, 149 Wn.2d 724, 743, 72 P.3d 708 (2003). “Under this approach, the evidence is sufficient if, when viewed in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at 744 (quoting *State v. Randhawa*, 133 Wn.2d 67, 73, 941 P.2d 661 (1997)).

At the revocation hearing, Judge Tollefson correctly applied the standard and burden of proof. RP at 436. Extrapolating the *Thorell* “criminal standard” to the statutory burden outlined in RCW 71.09.098, therefore, this court must look at the evidence in the light most favorable to the State and determine whether any trier of fact could, based on that evidence, have found by a preponderance of the evidence that the LRA be revoked.

For comparison, it is helpful to review similar criminal revocation standards, per *Thorell*. “Probation revocation hearings require minimum due process.” *State v. Myers*, 86 Wn.2d 419, 545 P.2d 538 (1976). “The

¹ This is the text of the previous version of the statute. The version adopted May 7, 2009 states, “The state shall bear the burden of proving by a preponderance of the evidence that the person has violated or is in violation of the court’s conditional release order or that the person is in need of additional care, monitoring, supervision, or treatment.” RCW 71.09.098 (3).

evidence is more than sufficient to meet the requisite burden of proof and to find that the judge was ‘reasonably satisfied’ that the appellant had violated the conditions of his probation.” *Id.* at 428. “Different levels of proof apply to parole revocation hearings and criminal proceedings.” *Standlee v. Smith*, 83 Wn.2d 405, 518 P.2d 721 (1974). “At the probation revocation hearing, the court need not be furnished with evidence establishing guilt of criminal offenses beyond a reasonable doubt . . . all that is required is that the evidence and facts be such as to reasonably satisfy the court that the probationer has breached a condition under which he was granted probation, or has violated any law of the state or rules and regulations of the Board of Prison Terms and Paroles.” *Id.* at 408-09 (quoting *State v. Kuhn*, 81 Wn.2d 648, 650, 503 P.2d 1061 (1972)).

Here, there was substantial evidence to meet the criminal “reasonably satisfies” standard and to meet the statutory “preponderance of the evidence” standard specified for revocation of the SVP LRA.

2. Appellant Engaged In A Pattern Of Behavior Deviating From The Terms Of The LRA

In his revocation hearing testimony, Ross admitted to violating a number of conditions of his LRA, any one of which is enough for the court to revoke his LRA. He admitted to possessing and concealing two unauthorized photos. RP at 144-45, 179. He and his treatment provider

testified that he admitted that he stole the photos (RP at 105, 143). And he admitted that he was dishonest with his treatment providers regarding possession of the photos. RP at 152, 169. Ross also admitted that he didn't keep his treatment provider apprised of his movements in the community (RP at 153). Additionally, his escort testified that Ross requested unauthorized deviations. RP at 298. Based on his pattern of deviations and failure to disclose, Ross also failed to have approved housing (App. Br. at 24, RP at 49-50) or an approved treatment provider. App. Br. at 6, RP at 103.

a. Appellant Stole, Possessed, And Concealed Two Unauthorized Photographs

Ross' treatment rules required him to be truthful with Mr. Taylor and members of the treatment team. One of his treatment rules prohibits lies of commission and omission, "and any other forms of deception." Ex. A at 5; Ex. A, App. B at 1. SCTF rules required him to obtain SCTF staff permission before acquiring and possessing still photographs. Ex. A at 5, Ex. B at 3. Ross testified that he signed both the treatment plan and the treatment rules. RP at 152. On appeal, Ross alleges that the State "failed to produce sufficient evidence to show that Ross willfully violated the condition of the release order" (App. Br. at 21) and that "the record is far from clear that Ross' possession of the photograph, *although a*

violation of the conditions of the LRA, was obtained by stealing it. . . .” App. Br. at 23 (emphasis added). However, Ross admits in his brief that he possessed the photos (App. Br. at 22, RP at 142, 179), that he concealed them (App. Br. at 22, RP at 143, 180), and that he “told Lang Taylor that he stole it . . .” App. Br. at 22, RP at 143. Further, Ross admitted that he knew that possessing the photo was breaking the rules. RP at 182. Given Ross’ admissions, there is clearly sufficient evidence to support the court’s findings.

Ross also states in his brief that he “failed to tell his therapist” about the photos (App. Br. at 22, RP at 152, 180) and that “he did tell Lang Taylor that he had the picture.” App. Br. at 23, RP at 168. What he fails to mention is that he did not tell Taylor about the photos until after they had been discovered by SCTF staff. RP at 105, 144, 167,180. Ross’ possession and concealment of the photos was clearly a violation of his treatment rules and therefore a violation of the conditions of his LRA, as was his failure to disclose this information to Lang Taylor before he was caught.

Ross asserts that possession of the photos and his failure to disclose was a *de minimis* violation and not a “serious violation.” App. Br. at 23. Ross is correct that RCW 71.09.325 defines a “serious violation,” among other things, as “any violation of conditions targeted to address the

person's documented pattern of offense that increases the risk to public safety." App. Br. at 22-23, RCW 71.09.325. However, Ross incorrectly interprets RCW 71.09.325 as necessary to revoke his LRA. RCW 71.09.325 merely defines the criteria under which an SVP may be taken into custody following a reported violation of the conditions of an LRA. *Id.* Under that section of the statute, an SVP who "commits a serious violation of conditions *shall* be returned to the [SCC] . . ." upon the notice of violation, pending proceedings to determine whether the LRA should be revoked or modified. *Id.* (emphasis added). During this period, the DOC may also return an SVP to the SCC for violations that are not "serious violations". *Id.*

RCW 71.09.098 sets out the criteria for the court to use at a revocation hearing. RCW 71.09.098. As stated above, the court determines whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. There is no requirement for a "serious violation."

Although the State was required to prove only that Ross violated the conditions of his LRA, "serious violation" was mentioned in closing arguments in the context of emphasizing the significance of the theft of the photos and the correlation with the "serious violation" criteria mentioned

in RCW 71.09.325. RP at 396. Lang Taylor also testified that Ross admitted that possession and concealment of the photos was a “major violation” of the treatment rules (RP at 105), and Dennis Pickett, then manager of the SCTF, testified that stealing is a “serious” violation of the SCTF rules. RP at 248. Although it was only necessary to prove that Ross committed a violation of the conditions of his LRA with regard to the theft, possession, and concealment of the photos, in fact, the evidence establishes that Ross committed several violations, some of them serious or major in the context of the various rules of his treatment plan and the SCTF.

b. Appellant Requested Unauthorized Deviations, Failed To Report Those Deviations, And Failed To Report Deviations Of The Escorts

Ross’ treatment plan required him to submit a detailed travel plan to a member of his treatment team for any trips away from the SCTF. Ex. A at 5; Ex. A, App. B at 4. It also required him to maintain a daily log, including times and locations of all activities he engaged in when away from the SCTF. Ex. A at 5; Ex. A, App. B at 4. Further, the treatment plan required Ross to seek clarification for any rules that he did not understand, and that not understanding a rule would not be considered a valid excuse for a violation. Ex. A at 5; Ex. A, App. B at 3.

Ross asserts that, because the escorts sometimes deviated from the trip plan of their own accord, he should not be held accountable for the

deviations. App. Br. at 23. As Ross admits, however, he did not report all of the deviations to his treatment team, and Ross himself was responsible for some of the deviations. App. Br. at 23. RRC Cutshaw testified that Ross requested unplanned stops on his trips to meet his cousin and other family members. RP at 278. She also testified that he requested unplanned stops to his bank and made some other requests for deviations. RP at 298-300. Ross testified that there were occasions when he did not apprise his treatment team of his movements in the community. RP at 151, 153. Lang Taylor also testified that Ross never told him he was being taken places by RRC Cutshaw that were not on his approved travel log. RP at 103.

Ross was required to report the deviations to his treatment team, whether or not his escorts were responsible for some of them. And, although he testified that he had previously reported similar deviations and nothing was done about it (RP at 147), he was still required to seek clarification about reporting those deviations. Further, the deviations regarding trips to his bank, Snoqualmie Falls, local shopping malls, local parks, vacant lots, and other places, were significantly different and more serious than the deviations he previously reported, such as escorts parking in a different lot. RP at 155. The latter required reporting and clarification.

For the above reasons, the State proved by a preponderance of the evidence that Ross violated the conditions of his LRA.

c. Appellant Did Not Have Approved Housing Or A Treatment Provider

The court-ordered conditions of Ross' LRA required him to engage in treatment with Lang Taylor. RCW 71.09.092(1); Ex. A at 5. The LRA also required Ross to be housed at the SCTF. Ex. A at 4. To be placed in an LRA, "housing [must exist] that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person . . ." RCW 71.09.092(3). Housing at the SCTF must be approved by the DSHS secretary. RCW 71.09.250(1)(a).

Taylor testified that he would no longer treat Ross. App. Br. at 24, RP at 103. Ross alleges that the State "failed to demonstrate that Ross failed to comply with the treatment conditions other than the possession of the photograph and the deviations largely fostered by the escorts" (App. Br. at 24), and that the termination of treatment and housing resulted from the escorts' actions. *Id.* First, the possession of the photograph is, in itself, a violation of the conditions of his LRA, as Ross admitted. App. Br. at 23. Further, Ross' allegations fail to account for the many violations for which Ross was solely responsible, i.e. the theft and concealment of the photo,

dishonesty with his treatment team, his own deviations, failure to report his and his escorts' deviations to any member of his treatment, and failure to clarify the treatment rules regarding these issues.

Ross also alleges that "Dr. Whitehill's testimony was not equivocal regarding future community-based treatment of Ross." App. Br. at 24. The trial court, however, correctly noted that Mr. Taylor is the only treatment provider approved by the court in its release order. CP at 157-60. Therefore, whether or not Dr. Whitehill would agree to treat Mr. Ross in the future is irrelevant regarding Ross' violation of the conditions of his LRA.

Even if the court had been able and willing to consent to a change in treatment providers, which it was not, it correctly found that Dr. Whitehill was equivocal. RP at 439. Ross correctly states that "Dr. Whitehill did not state that he would be unwilling to provide treatment to Ross." However, Dr. Whitehill also did not state that he *would* be willing to provide treatment.

Additionally, Ross contends that Dr. Whitehill stated that "Ross was still amenable to treatment in the community." App. Br. at 24. However, when Dr. Whitehill so testified, it was in the context of a hypothetical situation which did not include all the relevant facts relating to Ross' violations. App. Br. at 346-59. When presented with those facts,

Dr. Whitehill stated that he would need to review the record and “come to [his] own determination as to Mr. Ross’ amenability based on [his] understanding of all these issues, and further consultation with Mr. Ross.”

Judge Tollefson was correct in finding that Dr. Whitehill was equivocal regarding Ross’ amenability to future community-based treatment. Ross was terminated from treatment by Lang Taylor and failed to have approved housing at the SCTF. Therefore, the State proved by a preponderance of the evidence that Ross violated these conditions of his LRA.

Furthermore, Allen Ziegler testified that the SCTF will no longer house Ross. App. Br. at 24, RP at 49-50. As stated above, a person cannot be housed at the SCTF without the consent of the secretary. Because Ross does not have that consent, he cannot live there.

The evidence easily supports Judge Tollefson’s finding that Ross willfully engaged in a pattern of violating not one, but numerous conditions of his LRA. When this evidence is viewed in the light most favorable to the State, the evidence is more than sufficient to allow a finder of fact to conclude by a preponderance of the evidence that Ross willfully and repeatedly failed to comply with the terms and conditions of his release. Therefore, the revocation of Ross’ LRA should be upheld.

B. Appellant's Due Process Rights Were Not Violated Because The "Outrageous Government Conduct" Doctrine Does Not Apply To Civil Cases, Therefore, The Order Revoking His LRA Should Be Upheld

1. Ross Cannot Raise This Issue For The First Time On Appeal

For the first time, Ross alleges "outrageous government conduct." Since Ross did not raise this issue at trial, however, he cannot raise it now. RAP 2.5(a) provides that the Appellate Court may refuse to review this issue. While RAP 2.5(a) allows a party to raise for the first time on appeal a "manifest error affecting a constitutional right," that rule does not apply here. In *State v. Lynn*, 67 Wn. App. 339, 835 P.2d 251 (1992), the court prescribed a four-part test to determine whether a claimed error qualifies for review under RAP 2.5(a): 1) the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue; 2) the court must determine whether the alleged error is manifest (essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case); 3) if the court finds the alleged error to be manifest, then the court must address the merits of the constitutional issue; 4) if the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis. *Id.* Because the doctrine of outrageous government conduct is

traditionally a defense to entrapment, the State contends that Ross' "outrageous government conduct" claim does not raise a constitutional issue and fails at the first step. Even if it meets that test, it would certainly fail at the second step because the trial court heard ample testimony about the escorts' conduct but made its ruling based on Ross' conduct. CP at 157-60. Therefore, Ross has not made a plausible showing that the asserted error had practical and identifiable consequences at trial.

Whether the State has engaged in outrageous conduct is a matter of law, not a question for the jury. *State v. Lively*, 130 Wn.2d 1, 921 P.2d 1035 (1996), quoting *United States v. Dudden*, 65 F.3d 1461, 1466-67 (9th Cir. 1995). Ross cites a standard of review from a case in which the lower court *denied* the claim, stating, "[s]ince it is a question of law, an appellate court must review denial of such a claim under the de novo standard of appellate review." *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 536, 869 P.2d 1045 (1994). This is incorrect because Ross did not raise the claim at the revocation hearing, and raises it for the first time in this appeal.

2. The “Outrageous Government Conduct” Doctrine Does Not Apply To Civil Cases²

Ross argues that, although Washington has only applied the doctrine of outrageous conduct in criminal matters dealing with entrapment, it is “equally applicable” in this civil case. He fails to support his argument. App. Br. at 16. The doctrine has been applied in Washington almost exclusively as a defense to entrapment and is generally associated with deception in police investigations or with police brutality. Ross’ attempt to extend application to this case fails.

A review of Washington case law in which the outrageous conduct doctrine has been analyzed demonstrates the limited realm in which courts apply this doctrine. In entrapment cases, the court has evaluated such claims under a constitutional framework or under Court Rule 8.3(b).³ In

² In fact, only one case applying this doctrine in a similar civil matter could be found. *State v. Schulpius (In re Schulpius)*, 2004 WI App 39 (Wis. Ct. App. 2004), applying a *Salerno* analysis to find that, given the offender’s horrendous history of predatory sexual violence against children, the good-faith in ability of the responsible persons to comply with the trial court’s orders to find a suitable less restrictive placement over the course of four years neither shocked the conscience nor trespassed on rights implicit in concepts of ordered liberty. See *United States v. Salerno*, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987). Although isolated to begin with, the instant case can be distinguished because in *Shulpius*, the SVP had not engaged in any conduct of his own accord to prevent the LRA; however, Ross has.

³ See, eg., *State v. Athan*, 160 Wn.2d 354, 158 P.3d 27 (2007) (creation of a fictitious law firm to obtain DNA from an envelope not so outrageous as to offend a sense of justice or require dismissal of murder defendant); *Playhouse Corp. v. Washington State Liquor Control Bd.*, 35 Wn. App. 539, 667 P.2d 1136 (Div. 1 1983), (use of undercover agents and limited police participation in unlawful enterprises was not constitutionally prohibited); *State v. Emerson*, 10 Wn. App. 235, 517 P.2d 245 (1973) (no outrageous conduct where a police agent, at the request and under the direction of police officers, obtained evidence by becoming a customer of a common prostitute); *State v. Jessup* 31,

only one other context, police brutality, have Washington courts applied this doctrine. See *State v. Valentine*, 132 Wn.2d 1, 935 P.2d 1294 (1997) (no outrageous conduct in traffic stop where defendant refused to sign citation, was held by his arms by police when he attempted to reach into car, and was subdued after scuffle by use of pressure on carotid artery.)

Here, Ross has not been charged with a criminal offense and has made no allegation of entrapment, deception, or police brutality. In fact, Ross testified that he and Cutshaw were “friendly” (RP at 165) and Cutshaw said she “had a good rapport” with Ross. RP at 310. The doctrine of outrageous government conduct simply does not apply to this civil matter.

Wn. App. 304, 641 P.2d 1185, (1982) (police tactics were not so shocking as to bar conviction where a woman serving as a confidential police informant participated in acts of prostitution, unsuccessfully attempted to recruit new prostitutes, and advised business managers to be rougher with their prostitutes); *Lively*, 130 Wn.2d (outrageous conduct found when informant attended Alcoholics Anonymous(AA)/Narcotics Anonymous (NA) meetings to lure recovering alcoholics to commit illegal acts and where informant controlled criminal activity from start to finish); *State v. O'Neill*, 91 Wn. App. 978, 967 P.2d 985 (Div. 1 1998) (due process did not bar State from prosecuting defendant for bribing police officer who illegally accepted bribe where, despite officer’s flagrant conduct in soliciting bribes from defendant and other arrestees, facts were not so outrageous that they shock universal sense of fairness); *State v Pleasant*, 38 Wn. App. 78, 684 P2d 761, (1984) *review den.* 103 Wn.2d 1006 (no outrageous conduct where a paid agent of the police department posed as the owner of a construction company recruiting workers for a construction crew, asked the defendant whether he could procure marijuana, the defendant obtained a quarter pound of marijuana within an hour, sold marijuana to the agent and an undercover police officer, and defendant testified that he got marijuana for the agent to enhance the possibility of obtaining a job from him); *State v. Putnam* 31 Wn. App. 156, 639 P.2d 858 (1982), *review den.* 97 Wn.2d 1018 (no outrageous conduct where an undercover civilian agent, who actively worked as a prostitute for several months while infiltrating an illicit enterprise, engaged in the business of prostitution); *State v. Walker* 11 Wn. App. 84, 521 P.2d 215 (1974) (no outrageous conduct in undercover “speed” amphetamine case).

3. Even If The “Outrageous Government Conduct” Doctrine Applies, The Conduct In This Case Did Not Constitute Outrageous Conduct Because The Escorts Were Pursuing Purely Personal Pursuits, So There Was No State Action

The Due Process Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. In a Fourteenth Amendment substantive due process claim, the threshold step in the analysis is to determine whether the actor acted under color of state law. *Van Ort v. Estate of Michael Stanewich*, 92 F.3d 831 (9th Cir. 1996). Nothing in the language of the due process clause requires the state to protect life, liberty, and property of its citizens against invasion by private actors. *DeShaney v. Winnebago Cy. Dep’t of Social Serv.*, 489 U.S. 189, 196, 109 S.Ct. 998, 1003, 103 L.Ed.2d 249 (1989). Acts of state officials in the ambit of their personal pursuits are not state action. *Martinez v. Colon*, 54 F.3d 980, 986 (9th Cir. 1995), *cert. denied*, 516 U.S. 987, 116 S.Ct. 515 (Mem) (U.S., 1995) (citing *Screws v. United States*, 325 U.S. 91, 111, 65 S.Ct. 1031, 1040, 89 L.Ed. 1495 (1945)).

In *Martinez*, an on-duty uniformed police officer shot another officer at the police station, using his service revolver, but those actions were determined to be private action, because he was “bent on a singularly personal frolic.” *Martinez*, 54 F.3d at 987. Here, the DSHS escorts,

Ringener and Cutshaw, testified that they knew their conduct violated SCTF rules, and they were pursuing purely personal errands such as their own banking, eating their lunches, or picking up their own diabetes medicine. RP at 189, 270, 277, 319. Therefore, the escorts were not acting under color of state law. They were private actors and, as such, no constitutional protection applies.

4. The Conduct In This Case Did Not Constitute Outrageous Conduct Because The Escorts' Conduct Is Not So Shocking That It Violates Fundamental Fairness

A due process claim based on outrageous conduct requires more than mere demonstration of flagrant police conduct. Dismissal of criminal prosecution based on outrageous conduct is reserved for only the most egregious circumstances, and is not to be invoked each time government acts deceptively. *Lively*, 130 Wn.2d at 19. In reviewing a defense of outrageous government conduct, the court should evaluate conduct based on the totality of the circumstances. Each case must be resolved on its own unique set of facts, bearing in mind proper law enforcement objectives of prevention of crime and apprehension of violators, rather than encouragement of and participation in sheer lawlessness. *Id.* at 21. In evaluating whether a state's outrageous conduct violated due process, *as an affirmative defense*, appellate courts focus on the state's behavior and not the defendant's predisposition to commit crime. *Id.* (emphasis added).

Where a reviewing court finds state action, it must then determine if the conduct was outrageous. Although Ross relies heavily on *Lively* and mentions several evaluative factors, in fact, *Lively* set out a five-factor analysis. Factors considered when determining whether police conduct offends due process include: (1) whether police conduct instigated crime or merely infiltrated ongoing criminal activity; (2) whether defendant's reluctance to commit crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation; (3) whether government controlled criminal activity or simply allowed for criminal activity to occur; (4) whether police motive was to prevent crime or protect public; and (5) whether government conduct itself amounted to criminal activity or conduct repugnant to sense of justice. *Id.*

In determining whether police conduct violates due process, this court has held that the conduct must be so shocking that it violates fundamental fairness. *Myers*, 102 Wn.2d at 551; *State v. Smith*, 93 Wn.2d 329, 351, 610 P.2d 869, *cert. denied*, 449 U.S. 873, 101 S.Ct. 213, 66 L.Ed.2d 93 (1980). A due process claim based on outrageous conduct requires more than a mere demonstration of flagrant police conduct. *Myers*, 102 Wn.2d at 551. Public policy allows for some deceitful conduct and violation of criminal laws by the police in order to detect and eliminate criminal activity. *Emerson*, 10 Wn. App. at 242. Dismissal based on

outrageous conduct is reserved for only the most egregious circumstances. “It is not to be invoked each time the government acts deceptively[.]” *United States v. Sneed*, 34 F.3d 1570, 1577 (10th Cir.1994) (quoting *United States v. Mosley*, 965 F.2d 906, 910 (10th Cir.1992)); see also *State v. Pleasant*, 38 Wn. App. 78, 83, 684 P.2d 761, review denied, 103 Wn.2d 1006, 690 P.2d 1174 (1984).

If engaging in prostitution (*Jessup* 31 Wn. App. ; *Putnam*, 31 Wn. App.), soliciting bribes (*O’Neill*, 91 Wn. App.), restraining a detainee by pressing on his carotid artery (*Valentine*, 132 Wn.2d), and the myriad of other situations in which Washington courts have not found outrageous government conduct, it’s highly unlikely that attending to personal errands could be construed to be outrageous.

Here, the outrageous conduct analysis does not work. It is not possible to scrutinize the escorts’ conduct against the *Lively* factors, because their conduct was not related to preventing a crime, apprehending violators, or encouraging a crime. Their job was simply to escort Ross and monitor his movements, and their conduct was related solely to accomplishing personal errands. The difficulty in applying the *Lively* factors demonstrates that the doctrine is inapplicable here.

a. The escorts neither infiltrated nor instigated Appellant's violations

First, the court must determine whether police conduct instigated crime or merely infiltrated ongoing criminal activity. Here, there was no “police conduct.” The escorts were DSHS employees, and there was no “crime.”

With regard to the LRA violations, the court must look to the totality of the circumstances. *Lively*, 130 Wn.2d at 21. In his hearing testimony, Ross admitted to a number of violations of the conditions of his LRA. He admitted to possessing and concealing two unauthorized photos (RP at 144-45, 179), he and his treatment provider testified that he admitted that he stole the photos (RP at 105, 143), he admitted that he was dishonest with his treatment providers regarding possession of the photos, (RP at 152, 169), and he admitted that he didn't keep his treatment provider apprised of his movements in the community (RP at 153). Of these, only the latter directly involved his escorts, and only in some instances. Although the court reviewed testimony by the escorts, Cutshaw and Ringener, regarding their deviations from the travel plan, Cutshaw also testified that Ross requested and received unauthorized deviations of his own accord to meet with his cousin and other family members (RP at 278) and to go to his bank and for other purposes (RP at 298-99).

Additionally, Ross admitted to having previously possessed an unauthorized movie and being dishonest with his treatment provider about his possession of it, prior to his interaction with these escorts. RP at 169. Therefore, to the extent this factor can be applied at all, the violation activity in question was ongoing activity by Ross. The escorts neither infiltrated it nor instigated it. Any deviations by the escorts were simply the result of their breaking of their employment rules. Therefore, the escorts' conduct fails this part of the test.

b. Appellant Expressed No Reluctance To Commit His Violations, And The Escorts Did Not Plead Sympathy, Promise Any Profits, Or Solicit Appellant To Commit Violations

The court must next determine whether defendant's reluctance to commit the crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation. In *Lively*, the court found that, because the defendant was engaged in treatment in an effort to eliminate her drug problem, the informant lived with her prior to the deliveries, she never sought out anyone to sell drugs to, it was the informant who made numerous requests that the defendant purchase drugs, and the informant asked the defendant to marry him, the defendant's reluctance to commit a crime was purposely overcome by the State. 130 Wn.2d at 27.

Here there was no crime. As above, Ross' violations of his LRA

included much more than the deviations for which the escorts were responsible. In assessing the totality of Ross' violations, as *Lively* requires, it should be noted that Ross does not allege that his escorts were involved in his concealment of the photos or his dishonesty with his treatment provider. To the extent that Ross alleges his escorts were involved in his possession of the photo and some of the trip deviations, he does not allege that either Ringener or Cutshaw plead for his sympathies, promised him profits, or persistently solicited him to commit violations, and there is no evidence that any such conduct occurred. Therefore, the escorts' conduct fails this part of the test.

c. The Escorts Did Not Control The Violation Activity

The third factor the court must assess is whether the government controlled the criminal activity or simply allowed for criminal activity to occur. Again, it must be noted that there was no "criminal activity" in this case.⁴ Further, Ross does not allege that the escorts controlled or had any involvement in his decisions to steal or conceal the photos or to be dishonest with his treatment providers regarding the photos. He does allege that because the escorts had, by design, complete control over the vehicle and their own unreported trip deviations, and because Ross' failure

⁴ Although Ross' theft of the photos is a criminal act, the escorts were not investigating Ross for that act, nor was he charged for it. In fact, Cutshaw testified that, at the time she was escorting Ross, she was unaware of his theft of the photo. RP at 260.

to report their deviations was a violation of his LRA, this constitutes government control over the violation activity. This analogy fails for several reasons.

The government control in *Lively* involved entrapment. 130 Wn.2d at 18. The court found that because the defendant became emotionally reliant on the defendant, and because she used the informant's car to obtain cocaine at times arranged by the informant, the informant controlled the criminal activity from start to finish. *Id.* at 26. Here, there is no allegation of entrapment and the escorts' conduct was not done to investigate criminal activity, nor to catch Ross in the act of a violation. Therefore, there is no comparison between the control in *Lively* and the control here.

In addition, when considering the totality of the circumstances, the escorts had control over only the deviations instigated by them. They could only approve and/or fail to report the deviations instigated by Ross. Ross had complete control over his decisions regarding the theft and concealment of the photos and his dishonesty with his treatment providers. He also had control with regard to the deviations he instigated. Further, even Ross' claim of fear of retaliation for reporting escorts' trip deviations does not abrogate his duty to keep his treatment provider apprised of his movements. Rather, he acknowledged that if there was any confusion regarding his LRA treatment rules, it was his duty to seek clarification.

RP at 153.

Ross alleges that “Cutshaw’s decision to bring a photo album containing a picture of her in a swimsuit to the SCTF and to take the album with her while performing her job is particularly outrageous.” App. Br. at 17. He does not specify which *Lively* factor specifically applies to this claim, but since it is addressed in this section, the State presumes he is alleging either control or criminal activity (see *Infra*). Ross presents no evidence that Cutshaw’s actions regarding the photo were intentional. Cutshaw testified that she believed the photo album she took to the island contained only photos of cakes, and that the photos of her that Ross obtained must have been inadvertently tucked into the back of that album. RP at 269-60. Ross testified that he found the photo on the floor and that Cutshaw had shown him the album which is not inconsistent with her testimony.⁵ RP at 142, 180. Considering that Cutshaw contends that the photo album she took to the SCTF and with her on an escort trip included only what she believed were photos of cakes, it is doubtful that her actions violated any SCTF rule. Even if it did, if she was unaware that the photo was in the album, there was no control on her part that led to Ross’ theft of the photo. For the foregoing reasons, the escorts’ conduct fails the third

⁵ However, Ross’ statement at hearing that he found the photo is inconsistent with his previous statement to Lang Taylor that he stole the photo. App. Br. at 11, RP at 143.

Lively factor.

d. The Escorts' Motive Was Purely Personal, Neither To Prevent Crime Not To Protect The Public

The fourth factor the court must consider is whether the police motive was to prevent crime or protect the public. Again, the escorts are not police, and there was no crime. Ross relies on *State v. Emerson*, 10 Wn. App 235, 517 P.2d 245 (1973) (using public policy analysis to find no outrageous conduct where police posed as a customer in an entrapment prostitution case). Ross correctly asserts that the conduct “was not done for an investigatory purpose.” App. Br. at 20. But that is because there was *no investigation*, which is essentially the only context in which Washington has applied the outrageous conduct doctrine, and to which the *Lively* factors apply.

In *Lively*, the court found that the government was more interested in creating crimes to prosecute than in protecting the public from further criminal behavior. *Lively*, 130 Wn.2d at 26. Here, the escorts' actions were not taken for any purpose related to the revocation of Ross' LRA, because the escorts were not investigating Ross' compliance with the LRA.

Ross also states that the escorts' purpose was to willfully ignore or flaunt the rules, and that there was “absolutely no law enforcement or benefit to the protection of the public to be gained by the unauthorized

deviations.” App. Br. at 20. Again, because no entrapment is involved, this factor is particularly difficult to analyze. Police intentionally creating crimes to prosecute, as in *Lively*, or police acting undercover to detect existing crimes, as in *Emerson*, is a vastly different situation from one where the actor has a personal purpose, unrelated to Ross’ LRA violations, which results in neglecting job duties. Therefore, the escorts’ conduct in this case also fails the fourth *Lively* factor.

e. The Escorts’ Conduct Was Neither Criminal Activity Nor Repugnant To A Sense Of Justice

The final factor the court must consider is whether the government conduct amounted to criminal activity or conduct repugnant to a sense of justice. Ross alleges that because the escorts violated SCTF rules regarding deviations, this amounts to criminal activity. App. Br. at 17-18. Although SCTC former manager Dennis Pickett stated that he believed such violations were “probably illegal” under RCW 71.09 (RP at 254), there is no evidence supporting this claim. RCW 71.09 is a civil statute. While there is little doubt the statute assumes that escorts will perform their duties satisfactorily, it makes no provision, criminal or otherwise, for escorts’ failure to perform their job duties. *Id.*

Additionally, as discussed above, even if Cutshaw’s professed inadvertent actions regarding the photo album violated SCTF work rules, it

does not constitute criminal activity. As with the deviations, RCW 71.09 does not provide a criminal action for violating SCTF work rules, and even if there were, certainly some intent would be required, which has not been alleged here. Finally, although Cutshaw may have faced employment consequences as a result of her actions, she has not been charged with a crime.

Even when there *is* criminal activity on the part of law enforcement, courts have not found that conduct rises to the level of outrageous conduct. In *State v. Myers*, the court held that use by police of a fictitious arrest warrant to gain entry to defendant's house in order to execute a valid search warrant was not outrageous conduct. The court stated "It appears that the broad "fundamental fairness" guaranty is not transgressed absent "coercion, violence or brutality to the person." *Myers*, 102 Wn.2d at 551. See *Irvine v. California*, 347 U.S. 128, 132-33, 74 S.Ct. 381, 382-83, 98 L.Ed. 561 (1954) (distinguishing *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952)). See also *United States v. Kelly*, 707 F.2d 1460 (D.C.Cir.1983), and cases cited therein. "The requisite level of outrageousness . . . is not established merely upon a showing of obnoxious behavior or even flagrant misconduct on the part of the police . . ." *Id.* at 1476. Ross does not allege coercion, violence, or brutality. At best, the escorts' conduct could be construed as misconduct,

which does not meet the last *Lively* factor.

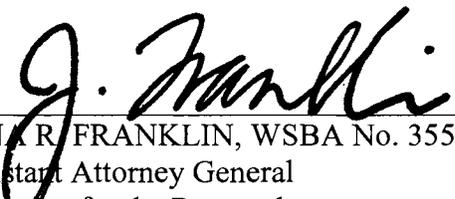
While this case does involve a restriction of Ross' liberty, that restriction is constitutionally valid. Ross was originally committed to the SCTC because he was he was found at trial and beyond a reasonable doubt to be a sexually violent predator. He was later granted an LRA subject to strict adherence to the court's order and his specific treatment rules, which Ross agreed to and signed. RP at 152. He admits violating a number of those rules, and the court rightfully revoked his LRA. Ross is accountable for his violations. The fact that his escorts also violated their employment rules in some instances of his violations does not invalidate revocation of his LRA

IV. CONCLUSION

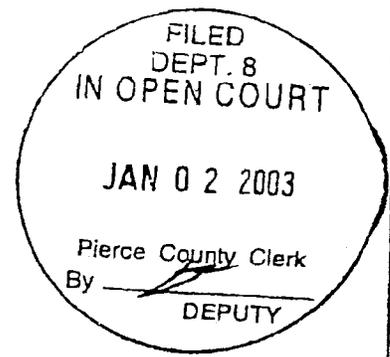
For the foregoing reasons, the State requests that this Court affirm the revocation of Ross' LRA.

RESPECTFULLY SUBMITTED this 19th day of June, 2009.

ROBERT M. MCKENNA
Attorney General



JAN R. FRANKLIN, WSBA No. 35524
Assistant Attorney General
Attorneys for the Respondent



**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

In re the Detention of:

NO. 98 2 03520 5

CASPER ROSS,

**ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE (LRA)**

Respondent.

THIS MATTER came before this Court on January 2, 2003, for entry of an order releasing the Respondent, Casper Ross, to a less restrictive alternative (LRA) treatment milieu. The Respondent was present in Court and was represented by his attorneys, Mary Opgenorth and Joanna Daniels. The Petitioner, State of Washington, was also present and represented by Assistant Attorney General Todd Bowers. Also present in court were the Petitioner's Community Corrections Officer (CCO), Linda McGrann, and Dennis Pickett, Community Transition Manager for the Special Commitment Center (SCC).

Upon the agreement of the parties, the Court enters the following findings of fact, conclusions of law, and order releasing Respondent:

FINDINGS OF FACT

1. The Respondent was involuntarily civilly committed as a sexually violent predator on June 10, 1998, following a jury trial.

ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE
(LRA)

EXHIBIT NO. A

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164
(206) 464-6430

2. Since his commitment, the Respondent has been housed at the SCC, where he has continued to engage in sexual deviancy treatment and collateral treatment programs.

3. In 2001, the Respondent presented a proposed LRA plan in which he would reside at his parents' home in Puyallup. There was sufficient evidence presented with this plan to merit a full trial.

4. In July 2002, the SCC, in its annual review of his mental condition, found that Ross still meets the criteria of a SVP, but that he has made sufficient progress in treatment such that he could be safely released to an LRA. However, the SCC believes the only appropriate LRA residence for the Respondent is the Secure Community Transition Facility (SCTF) on McNeil Island. The SCC does not believe an LRA with residence at Ross' parents' home would adequately protect community safety.

5. This Court scheduled an LRA trial for December 9, 2002, on the competing LRA proposals.

6. Consistent with the SCC's 2002 annual review, and based upon that, the parties have reached an agreement whereby the Respondent will be released to an LRA with the Respondent residing at the SCTF on McNeil Island. He will be treated by Lang Taylor, M.A.

7. The Respondent will be treated in the community by Lang Taylor, M.A., a sex offender treatment provider certified pursuant to RCW 18.155, as required by RCW 71.09.092(1).

8. Mr. Taylor has presented a specific course of treatment for the Respondent, as required by RCW 71.09.092(2). A copy of Mr. Taylor's treatment plan and treatment rules for the Respondent are attached hereto as Appendices A and B, respectively.

9. Mr. Taylor has agreed to assume responsibility for the Respondent's treatment and will report progress and compliance to this Court every ^{month} ~~2 weeks~~, as required by RCW 71.09.092(2) and .096(5).

Taylor
ms

ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE
(LRA)

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
900 Fourth Avenue, Suite 2000
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1 10. Mr. Taylor has agreed to report violations of this Court's LRA order immediately
2 to the Court, the Assistant Attorney General who is of counsel in this action, the Respondent's
3 supervising CCO, and the Superintendent of the SCC, as required by RCW 71.09.092(2).

4 11. Mr. Taylor's agreement to provide treatment, supervision, and monitoring of the
5 Respondent in accord with this Court's Order is demonstrated by his declaration attached hereto
6 as Appendix C.

7 12. The Respondent's housing at the SCTF is sufficiently secure to protect the
8 community, as required by RCW 71.09.092(3).

9 13. The Department of Social and Health Services (DSHS) that operates the SCTF has
10 agreed in writing to accept the Respondent into the SCTF, and to provide the level of security
11 required, as mandated by RCW 71.09.092(3). See Declaration of Dennis Pickett, attached as
12 Appendix D.

13 14. DSHS has agreed to immediately report to the Court, the Assistant Attorney
14 General of counsel in this action, the supervising CCO, and the SCC Superintendent if the
15 Respondent leaves the SCTF without authorization, as required by RCW 71.09.092(3).

16 15. The Respondent has agreed to comply with the requirements imposed on him by
17 Mr. Taylor, as required by RCW 71.09.092(4).

18 16. The Respondent has agreed to comply with the requirements imposed upon him
19 by this Court as those requirements are found in this LRA Order and any subsequent orders
20 modifying this Order, as required by RCW 71.09.092(4).

21 17. The Respondent has agreed to comply with the supervision requirements imposed
22 by the Department of Corrections, as required by RCW 71.09.092(5).

23 18. Pursuant to RCW 71.09.096(2) and (4), the Court finds that the LRA requirements
24 recommended by the DOC, as reflected in its written report attached hereto as Appendix E, are
25 necessary to ensure the Respondent's compliance with treatment and to protect the community.
26

ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE
(LRA)

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
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1 19. The Association for the Treatment of Sexual Abusers (ATSA) has stated in its
 2 Practice Standards and Guidelines that "the effective management of sexual abusers in the
 3 community requires a team approach." A critical component of the effectiveness of this team
 4 management approach is "regular communication between team members." As a result, members
 5 of the Respondent's treatment team - Mr. Taylor, the DOC representative, and the SCC
 6 representative - shall work closely with one another to ensure the efficacy of the Respondent's
 7 treatment while protecting the public.

8 20. A copy of this document and the appendices attached hereto have been provided to
 9 the Respondent. He reads, writes, and understands the English language and has read the
 10 aforementioned documents. He has indicated to this Court that he, in fact, understands them and
 11 has no questions about them.

12 **CONCLUSIONS OF LAW**

13 1. The Court has subject matter and personal jurisdiction in this case.

14 2. Conditional release of the Respondent to a less restrictive alternative, as outlined
 15 in this Order, is in the best interest of the Respondent and includes conditions that will adequately
 16 protect the community, as required by RCW 71.09.096(1).

17 Based on these findings of fact and conclusions of law, the Court hereby enters the
 18 following:

19 **ORDER**

20 For the purposes of this Order and any subsequent modifications thereto, the Respondent's
 21 treatment team is defined as his SOTP, Lang Taylor, his assigned CCO, and the designated
 22 representative of the SCTF.

23 1. The Respondent shall be released from the SCC to a less restrictive alternative
 24 (LRA) residential placement at the Secure Community Transition Facility (SCTF) on January 6,
 25 2003.

1 2. DSHS staff responsible for the Respondent's care and treatment at the SCTF shall
2 immediately report to the Court, the Assistant Attorney General of counsel in this action, the
3 supervising CCO, and the SCC Superintendent if the Respondent leaves the SCTF without
4 authorization.

5 3. The Respondent will be treated by Mr. Lang Taylor.

6 4. The Respondent shall comply with Mr. Taylor's treatment plan and treatment rules
7 for him. The treatment plan and treatment rules are appended hereto as Appendices A and B.
8 The Court makes the conditions imposed on the Respondent by Mr. Taylor's treatment plan and
9 treatment rules part of this Court's Order.

Monthly
~~every 8 weeks~~ *weekly* *WLB* *W*

10 5. Mr. Taylor will report every ~~8 weeks~~, in writing, the Respondent's treatment
11 progress and compliance with treatment and this Court's Order.

12 6. Mr. Taylor will immediately report to the Court, the Assistant Attorney General of
13 counsel in this action, the supervising CCO, and the SCC superintendent any violations of this
14 Court's Order, including any modifications later made to this Order.

15 7. The Department of Corrections (DOC) shall supervise the Respondent. The
16 DOC's recommended additional conditions are appended to this Order as Appendix E. The Court
17 makes the DOC's recommended additional release conditions part of this Court's Order.

18 8. You shall abide by all rules and conditions imposed upon you by the SCTF.

19 9. The Respondent shall comply with all provisions of this Order and any subsequent
20 modifications thereof.

21 10. The conditions required of the Respondent by his SOTP, his CCO, and the SCTF,
22 and imposed upon the Respondent by this Order, should, where possible, be read together and in
23 harmony with one another. However, there may be a situation in which they conflict. If this
24 occurs, the SOTP, CCO, and SCTF representative (the Respondent's treatment team) shall consult
25 with one another to resolve the conflict. If the treatment team is unable to do so, the matter will
26

ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE
(LRA)

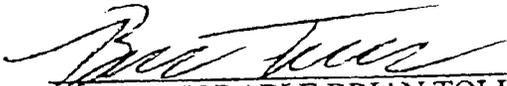
ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164
(206) 464-6430

1 be determined by the Court. Until such time as any conflict is determined, the Respondent is
2 ordered to follow the strictest rule applicable. This is consistent with ensuring public safety.

3 11. DSHS shall be responsible for all treatment costs relating to the Respondent until
4 such time as he is gainfully employed. At that time, he shall then contribute to the cost of
5 treatment, physiological testing and electronic monitoring at a minimum of 15% of net income, or
6 15% of treatment costs, whichever is less. He will then submit a check in the appropriate amount
7 to the SCC on a monthly basis. These costs will be tracked by the SCC and processed by the
8 Office of Financial Recovery.

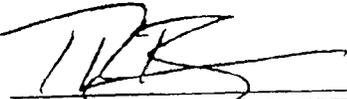
9 12. If the Respondent is terminated from treatment with Mr. Taylor, the Respondent
10 will, consistent with RCW 71.09.098(2), immediately be taken into custody and a hearing
11 scheduled to determine whether the Respondent's LRA will be revoked. RCW 71.09.098(3).

12 13. A review hearing is scheduled in this matter for the 12 day of June
13 2003. at 3:00 p.m. TRB TRB
14 at 3:00 p.m. TRB TRB
DATED this 2ND day of January, 2003.

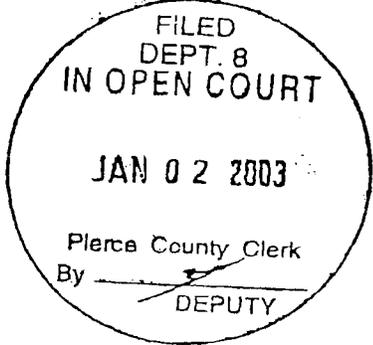

THE HONORABLE BRIAN TOLLEFSON
Judge of the Superior Court

17 Presented by:

18 CHRISTINE O. GREGOIRE
19 Attorney General

20 
21 TODD R. BOWERS, WSBA #25274
22 Assistant Attorney General
23 Attorney for Petitioner

24 
25 MARY OPGENORTH, WSBA #8291
26 JOANNA DANIELS, WSBA #19702
Attorneys for Respondent



ORDER ON RELEASE TO LESS
RESTRICTIVE ALTERNATIVE
(LRA)

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164
(206) 464-6430



SPECIALIZED DIAGNOSTIC AND TREATMENT SERVICES

SEXUAL DEVIANCE

SEXUAL DYSFUNCTIONS • ANGER & STRESS MANAGEMENT • OFFENDER THERAPY

TREATMENT PLAN

448 SAINT HELENS AVENUE
TACOMA, WASHINGTON 98402
TELEPHONE: (253) 396-0222
FAX: (253) 396-0480

CASPER ROSS:

In treatment planning there are several conditions that must be considered. Among them will be treatment intensity, heterogeneous treatment environment, development of motivation to progress in therapy, cycle identification, relapse charting and contingency management. Issues relating to impulse control, development and maintenance of appropriate arousal will be addressed in small group or individual behavioral sessions. The literature suggests that assisting men who rape with recognizing the emotional cues present in victims is helpful. In this particular case, I believe that Mr. Ross reads affective cues of his victims quite well and historically chooses to ignore them in pursuit of his own gratification. Other elements that will be addressed will include increasing his social support network, developing appropriate outlets for meeting his excitement needs.

A larger component of the treatment plan will be focused on the surveillance and monitoring of Mr. Ross's behavior. Supervision and surveillance will be accomplished by the use of electronic monitoring, chaperones, monitoring of risk factors by the therapist and treatment group, use of logs for recording travel. The use of polygraph will be routinely administered to evaluate compliance with treatment and conditional release conditions. He will also be required to participate with Community Accountability Boards in areas where he chooses to reside.

The use of the penile plethysmograph to assess arousal to deviant cues and the maintenance of appropriate sexual fantasy will be utilized regularly during behavioral therapy and quarterly thereafter to insure that only low levels of arousal to rape cues are present.

Plan: Due to the degree of risk in this case, Mr. Ross will be seen twice weekly for the first six months. One time per week will be dedicated to conditioning appropriate arousal and reducing arousal to deviant sexual cues.

- A. Initial assessment using the penile plethysmograph to achieve a baseline. If insufficient arousal is obtained, at least three more attempts will be made to achieve the baseline data needed for the implementation of the Minimal Arousal Conditioning treatment paradigm.
- B. Specific training in Minimal Arousal Conditioning.
Protocol available for review.
- C. Appropriate fantasy development. Masturbatory conditioning plan will be developed.
- D. Assessment of level of arousal achieved when engaged in appropriate fantasy. (Use of plethysmograph).

This portion of the therapy will be evaluated at twelve weeks to determine effectiveness of the interventions. Treatment plan adjustments may be made at that time.

Social competency and dating skills will be evaluated and Mr. Ross will participate in a small group focused on issues relating to social competency. The issue of consent is, of course essential. In Mr. Ross's case, it appears that he gains some level of consent from his victim and the cue to offend immediately follows a withdrawal of that consent. The use of cognitive restructuring methods may be the most useful intervention if this hypotheses is true. This intervention would be introduced during individual therapy sessions. He would be required to make audio tape recordings of his cognition that preceded the assault (each assault) with appropriate counter messages. Repeated review of the audio tape would be established during the individual sessions. Review Mr. Ross's view of entitlement is needed. There may be a need for cognitive restructuring in this area as well.

Cognitive distortions or inappropriate attitudes also require modification. These include those that minimize, deny, and justify rape. Exploration of his adversarial views towards women and sex, toward his own sexuality, toward adversarial relationships between men and women, toward the use of interpersonal violence to attain the desired goal sexual compliance must be identified and restructured. Again, behavioral programs to alter cognitive distortions will be used. Each of these areas may take many weeks or even months of repetitive review of appropriately paired cognition before generalization of appropriate thought may be expected.

In discussing cycle work with Mr. Ross, it may be that Mr. Ross's deviancy operates on a more linear level. Many of the planning segments of the usual cycle may not always be present in Mr. Ross's pattern of offending. The emotional elements may also be stimulus driven and not nurtured over time. This suggests that external controls that interfere with the progression of behavior that leads to sexual aggression must be established. This work will be accomplished both during the individual sessions and during the group therapy sessions.

Group therapy will be the primary platform for completing the therapy with Mr. Ross. Allowing that Mr. Ross has considerable insight into his offending at this time, group therapy will be the platform for monitoring his behavior, problem solving, and the legitimate meeting of his needs.

The formation of a working relapse plan is essential. High risk indicators are the easiest to monitor and identify. It is Mr. Ross's obligation to identify optimal functioning and the first slips that lead towards high risk behavior. This area is monitored during the therapy group and his community support system.

Victim ology issues are generally addressed during group therapy sessions. Written assignments, video presentations, speakers, and readings are a part of intervention addressing victim issues. Written assignments, book reports and discussions are a part of the group therapy program.

The formation of his community support group usually begins with his family and evolves as social, recreational and employment opportunities are created. Disclosure of his pattern of offending and methods of manipulation are explained to the support group which broadens the protective cover both

for the community and for Mr. Ross. Additionally, enrolling in the Department of Corrections Guardian Program brings concerned community members into the process which may lead to further positive community support. Participation with the Community Accountability Board in the area where he resides will also offer further protection for the community and an opportunity for Mr. Ross to become more public. By becoming more public he becomes more human and not the "horrible" person the uninformed public seem to believe most offenders are.

If further information is needed, please contact me.

Therapist Signature: George Taylor ms. Date: Jan. 8, 2002

Client Signature: Casey M. Ross Date: 2/4/02

LANG TAYLOR, M.A.**SPECIALIZED DIAGNOSTIC AND TREATMENT SERVICES**

Sexual Deviance Sexual Dysfunction Anger & Stress Management Offender Therapy

TREATMENT RULES

TREATMENT RULES ARE NECESSARY CONDITIONS TO INSURE COMMUNITY SAFETY. VIOLATION OF ANY TREATMENT RULE MAY BE GROUNDS FOR TERMINATION FROM THE PROGRAM. ALL TREATMENT INFRACTIONS WILL BE REPORTED TO THE APPROPRIATE PARTIES PURSUANT TO RCW 71.09.092(2) AND THE COURT'S LESS RESTRICTIVE ALTERNATIVE ORDER

A. General Rules of the Program

1. **Victim Contact:** Without specific permission from the treatment team (myself, your Community Corrections Officer [CCO], and the Secure Community Transition Facility [SCTF] representative), you are to have no contact with your prior victims. Prohibited contact includes by telephone, writing, or through another person. This rule extends to all members of the victim's immediate family. Finally, you are not to enter the premises where any prior victim resides for any purpose and at any time, unless you have the prior authorization of your treatment team.
2. **Contact with Minors:** You are to have no direct or indirect contact with minors under the age of eighteen (18), without the prior consent of your treatment team. If the treatment team consents to contact with minors you shall follow all conditions for such contact that are imposed upon you by the treatment team. You are to refrain from activities such as going to parks, swimming pools, playgrounds, game rooms, or other places which would bring you into contact or close proximity with minors. You may not live in any residence where minors also live without the prior approval of the treatment team and the court. Accidental and incidental contact with minors is not a violation of these rules if the contact was unavoidable. Such contact must be reported to your treatment team.
3. **Drugs and Alcohol:** You are not permitted to consume alcohol, unauthorized prescription medications, or illegal drugs.
4. You shall cooperate fully with all law enforcement personnel, Department of Corrections (DOC) personnel, and Department of Social and Health Services (DSHS) staff and comply with the conditions of the court's LRA orders. *When conditions imposed upon you by the various parties to this action (e.g. myself, your CCO, or the SCTF) conflict, the more restrictive rule applies.*
5. You will keep your treatment team informed about your present address, phone numbers, employment situation, social contacts, auto descriptions and any other factors that are relevant to your movement and activities in the community.
6. **Honesty:** Your honesty is demanded in treatment with me. It is a treatment rule violation if you lie to me or members of your treatment team. This includes lies of omission, as well as commission, and any other forms of deception. You shall submit to polygraphs and/or plethysmographs upon request.

APPENDIX B

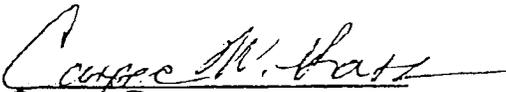
15.5 You shall have electronic home monitoring at any job you have outside the SCTF. ~~MR~~ No CUR ✓

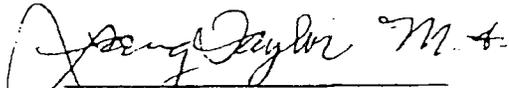
16. **Dating:** You shall not date or engage in a romantic relationship with anyone without the prior consent of your treatment team. You must notify any person you date or engage in a romantic relationship with of your status as a convicted sex offender and your civil commitment status. This must be done prior to any sexual involvement with that person. You are expected to practice safe sex to prevent disease transmission and unwanted pregnancies. Your spouse or romantic partner must acknowledge reading and understanding your treatment contract and rules.
17. **Employment:** Your employment may not involve activities where regular contact with minors or persons with physical or emotional disabilities (e.g. health care facilities, with retarded or elderly citizens, etc.) might occur. You shall not be employed in activities that involve close physical contact with persons (e.g. employment as a shoe or clothing salesperson). You shall be employed, in school, or actively seeking employment while you are in therapy.
18. You shall not maintain relationships with persons who are negative support systems. Such persons include those who encourage you to break your treatment rules or other guidelines imposed upon you by members of your treatment team or the court. This also includes persons who encourage denial, minimization, or other thinking errors.
19. Your continuation in therapy is dependent upon your complete disclosure of, and acceptance of responsibility for, your entire deviant sexual history.
20. Physical aggression towards myself or any other person may result in your termination from treatment.
21. ~~You shall inform your treatment team in advance of any~~ ^{No} overnight stays away from your residence. ^{CUR} ^{TR} ✓
22. You shall not divulge the names of, nor any information about, your fellow group members without the prior approval of that group member. Breaking this rule may result in your termination from your treatment group.
23. Although these treatment rules have been drafted to be as specific and easy to understand as possible, you may still have questions about them. If you do, it is your responsibility to clarify any questions you have about the interpretation of these rules. "I did not understand the rule," will not generally be considered a valid excuse for violation of these unambiguous treatment rules.
24. You should understand that, although I am responsible for your outpatient sex offender treatment, I am also a member of your treatment team. As such, I will be in very close contact with the other members of your treatment team, as well as other DOC and DSHS personnel regarding your treatment and compliance with the conditions of your LRA release.
- B. Rules Geared Individually to Mr. Ross:** To the extent these conditions may conflict with the general conditions listed above, the more restrictive condition applies.
1. Mr. Ross will reside at the SCTF and will not leave the facility without an escort approved by the SCTF.

2. When employed, Mr. Ross will be escorted to and from work by an escort approved by the SCTF. The escort will remain with Mr. Ross during his working hours.
3. Mr. Ross will submit to random urinalysis tests at the request of the members of his treatment team.
4. There will be no alcohol in Mr. Ross' residence.
5. There will be no firearms in Mr. Ross' residence.
6. Mr. Ross will fully disclose his history of deviance, treatment rules, and other court imposed rules of conditional release prior to engaging in the development of a friendship or romantic relationship with any adult woman.
7. Community Support Network: Mr. Ross will be required to develop a community support network (CSN). The members of the CSN shall be approved by the treatment team. The CSN will be made up of Mr. Ross' family, friends, church members, guardians, and treatment team. The CSN will be fully informed by Mr. Ross and his treatment team of: Mr. Ross' history of sexual offending, his methods of manipulation, his treatment rules, and the other conditions of his LRA release order(s). The civilian members of the CSN will be asked to sign a waiver permitting criminal background checks to be performed.
8. Mr. Ross shall maintain a daily log that will include the times and locations of all activities he engages in when he is away from the SCTF. The accuracy of the log will be periodically verified by a polygraph examination.
9. Mr. Ross will not be permitted to have contact with persons who have been convicted of a crime, with the exception of the members of his CSN. Notwithstanding this rule, Mr. Ross may have contact with the following individuals only under conditions imposed by his treatment team: Chris Christensen, Sophia Kampe, Craig Edwards, Janet Matson, Larry Kampe, and Troy Ross.
10. Mr. Ross shall notify his treatment team of all prescription drugs in his possession.
11. Travel: When Mr. Ross travels away from the SCTF, he shall submit a detailed plan for the trip, including the nature of the activities to be engaged in, the persons with whom he will be, the length of time he expects to be away from the SCTF, and the risk situations he anticipates he may encounter, as well as methods of addressing those risk situations. Mr. Ross' plan shall be submitted to a member of his treatment team.
12. Internet Usage: If Mr. Ross is permitted access to the Internet at the SCTF, his use of that shall be done in a public place, the Internet shall be accessed by an SCTF staff member with a confidential password, and that password will not be shared with Mr. Ross. Mr. Ross shall not have a modem unless that has been approved by his treatment team.

- 13. Mr. Ross' telephone calls from the SCTF will be randomly monitored for as long as his treatment team deems necessary.
- 14. Mr. Ross may continue to have contact with his biological daughters under such conditions approved by his treatment team.
- 15. Mr. Ross' treatment team, other staff at the SCTF, and at least one member of his CSN will meet with Mr. Ross at least once a month to discuss his progress in treatment and identify areas that need additional work. This shall be done in an effort to guide Mr. Ross towards less restrictive LRAs, while still ensuring public safety.

I ACKNOWLEDGE I HAVE READ THE FOREGOING AND I UNDERSTAND AND AGREE TO THE TERMS CONTAINED HEREIN.


 Casper Ross


 Lang Taylor, M.A.

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

IN RE THE DETENTION OF:)
CASPER WILLIAM ROSS,) NO. 98-2-03520-5
Respondent.) DECLARATION OF LANG TAYLOR

I, LANG TAYLOR, declare that:

I am a sex offender treatment provider certified under RCW 18.155.

I have agreed to accept Casper Ross as a client for outpatient treatment in the event the Court orders a conditional release under the provisions of RCW 71.09, and have submitted proposed conditions for release and Treatment Rules and Policies.

I am aware that as Mr. Ross' primary treatment provider, I will have obligations to make regular progress reports to the court and to the Community Corrections officer assigned to supervise Mr. Ross, as well as obligations to immediately report any violations of the specified treatment plan and court order outlining the conditions of his release to the court, prosecuting

DECLARATION OF LANG TAYLOR - 1

APPENDIX C

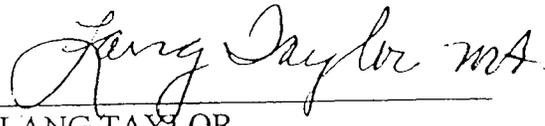
Department of Assigned Counsel
DRAWER M
9601 Steilacoom Blvd. SW
Tacoma, Washington 98498-7213
Telephone: (253) 756-231
Fax: (253) 584-5803

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attorney and/or Attorney General's office, the supervising community corrections officer, and
the Superintendent of the Special Commitment Center, as required by RCW 71.09.092(2).

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 14 day of December, 2002 at Tacoma, Washington.


LANG TAYLOR

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

In re the Detention of:

CASPER WILLIAM ROSS,

Respondent.

NO. 98 2 03520 5

DECLARATION OF DENNIS
PICKETT

DENNIS PICKETT declares as follows:

1. I am employed by the Department of Social and Health Services (DSHS) as the Community Transition Manager for the Special Commitment Center (SCC).
2. The SCC is where all persons detained under RCW 71.09 are initially housed for evaluation and treatment.
3. The Secure Community Transition Facility (SCTF), is a less restrictive alternative residential placement for persons committed as sexually violent predators (SVPs) who have progressed sufficiently in treatment to be safe to be conditionally released.
4. In the SCC's 2002 annual review of Casper Ross, the SCC recommended that he be conditionally released to an LRA with his residence at the SCTF.



STATE OF WASHINGTON

**DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
LAKEWOOD OFFICE / PARKLAND SOUTH OFFICE**

10109 South Tacoma Way • Building C, Suite 4 • Lakewood, Washington 98499
(253) 589-7000 • FAX (253) 589-7091

December 09, 2002

The Honorable Brian Tollefson
Pierce County Superior Court
930 Tacoma Avenue South
Tacoma, WA 98402

RE: ROSS, Casper William
Pierce County Cause #98-2-03520-5

**LESS RESTRICTIVE ALTERNATIVE
RELEASE PLAN FOR CASPER W. ROSS
Revised 12/17/02**

RESIDENCEY

The proposed residence for Mr. Ross, a Secure Community Transition Facility (herein referred to as the SCTF) which is commonly known as a Less Restrictive Alternative (herein referred to as LRA), is located at the Annex/North Complex. This is situated in the center of McNeil Island. It is approximately two miles from the Department of Corrections (DOC) McNeil Island Corrections Center that is a medium security facility and is approximately 2.8 miles across the water from Steilacoom, Washington. The SCTF is located in an isolated area of the island. There are no residences, schools, or parks within direct sight. The road leading to the SCTF is posted *Road Closed To All Private Vehicles*. The Annex/North Complex has been renovated with upgraded security measures including an eight-foot cyclone fence and a Microwave Detection Alarm System. The alarm system is programmed to alert staff if a resident attempts to egress from any door or window without permission. Surveillance cameras are located throughout the facility and this allows for 24-hour a day security monitoring. Additionally, the SCTF is supervised 24 hours a day, seven days a week, by trained professional staff from the Department of Social and Health Services (herein referred to as DSHS). The staff are equipped with radio/cell phones at all times thereby ensuring they are able to communicate with other team members on duty and to contact authorities in case of

an emergency, fire, escape, or assault. As a final measure to ensure security, an officer from the Washington State Patrol is positioned on site at the SCTF 24 hours a day.

SPONSOR/PROGRAM DESCRIPTION

DSHS is the primary sponsor of the SCTF. The goal of the SCTF is to promote successful community reintegration of former Special Commitment Center (herein referred to as SCC) residents. The SCTF offers on site training and skill building which currently consists of approximately fifteen skill building modules. These modules include, but are not limited to, such subjects as personal finance, job hunting, using community medical resources, nutrition, grooming and hygiene, and relaxation. Each resident is evaluated upon entry to the SCTF, and a program is then tailored to fit that resident's needs.

The SCTF will eventually accommodate approximately twenty-four such residents and will be staffed 24 hours a day, seven days a week. SCTF residents will not be allowed to leave the facility except for approved activities. Approved activities may include: seek and obtain employment, pursue education or training, attend recommended treatment programs, recreational activities, visits with family if approved by the CCO, the SOTP, and the SCTF representative, or other activities approved by the treatment/supervision team. All such excursions for residents will include being accompanied by professionally trained staff acting in the capacity of DSHS escorts. The SCTF will be used as a "step-down" or transition facility between the SCC and subsequent placement in the community.

Specific to Mr. Ross, he will begin his SCTF programming to include vocational/job hunting, personal finance, and community medical resources. He will be assessed to determine what additional modules would benefit his transition process. Mr. Ross has shown a history within the SCC of a high level of verbal aggression in his interactions with staff and fellow residents. The SCTF will provide a skill-streaming module for Mr. Ross that deals with communication skills and other relevant issues.

TREATMENT CONTRACT

It is this writer's understanding that Mr. Ross will enter into treatment with Mr. Lang Taylor, MA, a state certified sex offender treatment provider, although I have not been provided with a signed treatment contract at the time of writing this report. Mr. Taylor's office is located at 446 St. Helens Avenue in Tacoma 98402, and his phone number is (253) 396-0222.

At a meeting held 11/25/02 at the office of Mr. Ross' attorney, Mr. Taylor assured those present that he would have a treatment contract prepared and ready by the following week. I made repeated attempts to reach Mr. Taylor by telephone and left numerous messages requesting the treatment contract for purposes of reviewing it for this report to the Court. My phone messages were not returned in spite of Mr. Taylor knowing that my report for this Court is due on or before 12/13/02. After enlisting the help of my

supervisor to obtain this necessary document for my report, Mr. Taylor faxed an unsigned treatment contract to my office late on the afternoon of 12/10/02 after I had already left work. This morning, 12/11/02, is the first opportunity that I have had to review the contract, and I am assuming it is not the final version for Mr. Ross to sign. I am adamantly opposed to treatment rule #2 where Mr. Taylor has crossed out the Department of Corrections approval for contact with minors and left that up to only his discretion. Mr. Taylor has added what he titled 'External Control (Community Safety)' for Mr. Ross, and that document is unacceptable to this officer. Again, I am adamantly opposed to what appears to be an attempt to gain from the Court the granting of unilateral decisions by the treatment provider that are decisions which should be made by the entire transition team, the SOTP, the CCO, and the SCTF.

EMPLOYMENT PLAN

Prior to incarceration in 1987, Mr. Ross had a sketchy employment history complicated by moves between Oregon and Washington and by problems with the law, arrests, substance abuse, and marital issues. Mr. Ross worked for approximately five years while incarcerated as a warehouseman/receiving clerk. He also has an apparent talent for painting ornaments and making Native American dream catchers that his mother and another friend have been able to sell for him. This has resulted in Mr. Ross having been able to save a significant amount of money prior to his transition out of the SCC.

Mr. Ross has indicated that he wants to obtain employment independent of his parents. He does have an interim plan to work for his mother refinishing antiques that she purchases at various places and then sells at her Auburn antique store. I met with Mr. Ross' parents, and they will be able to offer him that opportunity. He would work at refinishing various pieces of wood furniture at their home in Puyallup; when an item sells, the profit would then be split between Mr. Ross and his mother. The Puyallup home has a large garage and enclosed back porch where Mr. Ross would do the refinishing work. This employment can begin as soon as Mr. Ross transitions to the SCTF and travel and other arrangements are set up per the notification requirements for all travel of SCTF residents. At all times while working at his parents home, Mr. Ross will have line of sight supervision by a DSHS escort; he will never work alone for the duration of time that he resides at the SCTF. Any work search efforts and/or future employment while living at the SCTF will require a DSHS escort to maintain visual contact with Mr. Ross at all times. Any and all employment plans will require the approval of his treatment provider, assigned CCO, and DSHS.

EDUCATION AND TRAINING

Mr. Ross had problems in school from age thirteen onward for such issues as skipping and fighting. He completed the tenth grade in the public school system, moving between Oregon and Washington, and finally quit in his eleventh grade year. Prior to that, he had spent almost a year at a boy's school in Oregon due to criminal conduct/convictions. Mr. Ross was convicted of his first adult sex offense at the age he

would have been a senior in high school. Mr. Ross did obtain a GED while incarcerated in 1988. By self-report, he has completed several college level classes in accounting and computers with the intent to be able to run his own business someday. His warehouse position in the prison system included some five years of extensive forklift driving experience in addition to learning to operate as a shipping and receiving clerk. Should Mr. Ross pursue any additional education as an SCTF resident, all education/training will require the prior approval of his treatment provider (herein referred to as SOTP), his assigned Community Corrections Officer (herein referred to as CCO), and DSHS. Any potential school or employer shall be apprised of his SCTF status, and a DSHS escort would be required to have visual contact with Mr. Ross at all times.

COMMUNITY PROTECTION

Mr. Ross will meet with his assigned CCO within 24 hours of release from the Special Commitment Center to the SCTF. All Court ordered conditions and the Department of Corrections Conditions, Requirements, and Instructions will be thoroughly gone over with Mr. Ross at that first meeting. He will also be required to register as a sex offender with the Pierce County Sheriffs' Department within the same 24-hour period. Mr. Ross will report weekly to his assigned CCO, Linda McGrann, at the DOC Lakewood field office. During these weekly office visits, he will submit his planned schedule of activities for the upcoming weeks to his assigned CCO for review and approval. Mr. Ross will not be allowed to leave the SCTF without an approved reason, approved by his SOTP, DSHS, and his assigned CCO, nor without a DSHS escort who will have Mr. Ross in visual contact at all times. Additionally, Mr. Ross will wear an electronic monitoring device at all times. While visiting the mainland, Mr. Ross will be transported in a vehicle that is marked with identifiable letters or numbers displayed in the rear window so that law enforcement authorities can readily identify the vehicle in case of an emergency. The local law enforcement agency will receive a copy of Mr. Ross' approved weekly activities. The law enforcement officers may then use the scheduled activity plan to monitor Mr. Ross' whereabouts in the community by performing random and in person contacts.

COMMUNITY CONCERNS

Following is a summary of community concerns related to the location of the Secure Community Transition Facility (SCTF):

Neighborhood: McNeil Island is approximately 4,400 acres in size. The SCTF is located in the center of the island. There are approximately fifty homes on the southeast end of the island. The homes are in different locations in the 200 and 300 blocks and Coast Road. The neighborhoods are not within direct sight of the SCTF; however, they can be viewed from a distance while traveling in a car. The residential areas have identifiable playgrounds and children's toys in plain view. Some of the homes are completely fenced while others are partially fenced. The new SCTF buildings, due for completion next month, are about one quarter mile from the current

facility and further away from the above mentioned homes. The new facility also is more out of sight from the road than the present SCTF facility.

Private boat owners: Private boat owners have been known to attempt docking at McNeil Island; however, private boats are required to remain 100 yards away from the island. If a private boat is spotted near the island, boat patrol will be activated to redirect the boat away from the island.

Schools: Harriet E. Taylor Elementary School, grades K-5, is located on McNeil Island. School hours are Monday through Friday from 8:00 am through 3:00 p.m. The school is located on the southeast end of the island and is approximately 2.2 miles from the current SCTF.

Community Center: A community center is located adjacent to the elementary school. The residents of McNeil Island utilize the center for various activities.

Day care facilities: The Department of Corrections has been unable to obtain any information that would indicate there are any licensed day care facilities on the island.

Recreation and training activities: The McNeil Island Corrections Center is committed to building partnerships with the community by participating in community projects and events. Some of the partnerships and/or projects include the Angel Bear Program, Community Tours, Giving Tree Project, Toys for Tots Project, and the Work Ethic Community Service projects. People from the mainland travel to the island to participate in these events.

TRANSPORTATION

Specific procedures have been designed and implemented for transporting SCTF residents such as Mr. Ross to and from the mainland. As required by law, Mr. Ross and his DSHS escort will not be allowed to travel on passenger boats during those times when children are normally traveling to and from school.

- 1) When a supply barge is available and its use is feasible, Mr. Ross and his DSHS escort will be transported in a passenger vehicle on a barge. During transport, all barge passengers will be required to remain in their vehicles. This requirement assures a high degree of separation between Mr. Ross and the other passengers.
- 2) Mr. Ross and his DSHS escort will avoid traveling on passenger boats when children are normally going to and from school as stated above per legal requirement.
- 3) Mr. Ross and his DSHS escort will time their arrival at the passenger docks to minimize waiting time. When the waiting time is ten minutes or less, Mr. Ross and his escort will remain in a parked vehicle until boarding. In cases of severe weather or if a longer waiting time is required, Mr. Ross will sit in a designated area at the dock with his DSHS escort.

- 4) When boarding passenger ferries, Mr. Ross and his DSHS escort will walk immediately to, and remain seated in, a designated area that provides separation from other passengers as possible. They will remain seated in the designated area until all other passengers have disembarked.
- 5) While visiting the mainland, Mr. Ross will be transported in a designated state vehicle provided by DSHS. The vehicle displays an identifiable marker in the rear window that will help law enforcement identify the vehicle in the community.

COMMUNITY SUPPORT

At the present time, Mr. Ross' community support consists of his treatment provider, DSHS, DOC, and any resources available to them.

Mr. Ross' parents, Larry and Avis Kampe, remain very supportive of him. Mr. Ross has a number of siblings to provide positive community support and others that the Department of Corrections would oppose to being a part of his community support team. To clarify this for the Court, the oldest brother, Troy Ross, is currently on active supervision in Oregon and has been a co-defendant of Mr. Ross in the past. Another brother, Larry Kampe, is currently serving a sentence on McNeil Island for Rape, 2nd Degree/Domestic Violence. A sister, Sophia Kampe, is active DOC on monetary status for a drug conviction. Should contact be allowed with Sophia, DOC would want to monitor that closely. The remainder of Mr. Ross' siblings are considered to be a part of his community support team. A sister, Ranette Snider of Puyallup, a brother, Mark (Ross) Kampe of Graham, a sister, Laura Kampe of Roy, and a sister, Lynn Kampe of Auburn are all considered positive community support. Mr. Ross has presented the names of two adult female friends that he considers or wants to be a part of his community support, Kathy Edwards and Janet Matson. Any and all contact with these or other women would be subject to the joint approval of Mr. Ross' SOTP, his CCO, and the SCTF director. Contact with any extended family members, especially children under the age of eighteen, would require the approval of Mr. Ross' support team, his SOTP, his CCO, and the SCTF director. Any and all contact with every person mentioned above will take place under the direct sight supervision of a DSHS escort.

RELAPSE PREVENTION AND CLINICAL TEAM REVIEW

Mr. Ross' clinical team will consist of Mr. Lang Taylor, MA, his sexual deviance treatment provider, the assigned DOC Community Corrections Officer, Linda McGrann, the SCTF program director, Mark Davis, the SCTF program clinician, Paula vanPul, the SCTF escorts, and Mr. Ross' parents and approved siblings. Should the Court approve Mr. Ross' release to the SCTF, it is anticipated that he will work with the clinical team to develop ongoing relapse prevention plans to facilitate community reintegration. The treatment team will work together at all times to monitor and discuss Mr. Ross' progress and to develop plans and/or alternatives to any issues that might arise that would interfere with adjustment to and progress in the SCTF. There will be a team meeting on

a monthly basis to evaluate progress and to further the transition process. The core people of the clinical team is comprised of the SOTP, the CCO, and the SCTF; any changes and/or decisions require the agreement of those three entities. Mr. Ross' relapse prevention plan is considered to be a dynamic document that will be reviewed, edited, and revised as needed and with input from and approval of the SOTP, the CCO, and the SCTF.

SUMMARY

Mr. Ross is a 39-year-old Caucasian male who was civil committed to the Special Commitment Center on McNeil Island on 06/10/98 following a jury verdict that found him to be a sexually violent predator under RCW 71.09. Prior to Civil Commitment, Mr. Ross had been involved in sexual deviancy treatment at Twin Rivers, a DOC facility, since 03/11/97. A treatment summary dated 09/23/97 from Twin Rivers reported that Mr. Ross was a high risk to re-offend. Mr. Ross' current diagnosis include: **Axis I**, Paraphilia Not Otherwise Specified (NOS) Rape, Alcohol Dependence in a controlled environment, Polysubstance Abuse in a controlled environment; **Axis II**, Antisocial Personality Disorder (significant psychopathy).

Mr. Ross has been actively involved with sex offender treatment since the time of his commitment in 1998. In addition, Mr. Ross has continued his involvement in family therapy with his mother and stepfather, Larry and Avis Kampe. Mr. Ross completed a sexual history polygraph in March of 2001 with Mr. Minnich who reported that no deception was indicated on the polygraph.

Mr. Ross is currently assessed as possessing a high level of psychopathy which is significantly linked to high risk for violent and sexual re-offence. This psychopathy is seen as an "ingrained and intractable part of his personality." File review indicates that while Mr. Ross has made significant treatment gains, he is still found to meet the criteria of RCW 71.09.020 as a Sexually Violent Predator who continues to "suffer from a mental abnormality and personality disorder that renders him likely to commit predatory sexual offenses if unconditionally released."

Should the Court order Mr. Ross to a Less Restrictive Alternative (LRA), the SCTF located in the center of McNeil Island will provide the highest level of security in terms of community safety. This facility will provide the highest level of community protection that is available while also assisting Mr. Ross to transition back into the community. This high level of security is an essential component of Mr. Ross' reintegration into the community. Mr. Ross will be monitored 24 hours a day. When off the island, his DSHS escort will monitor all of his movements. I have recently met with Mr. Ross, and he has agreed to abide by all release conditions recommended by the Department of Corrections.

- 21) You will not enter onto the premises of any school, day-care, park, recreation area, theater, multi-family living complex, or other public or private facility normally frequented by minors without the express written permission of the SCTF, the CCO, and the SOTP, and in the presence of an approved monitoring adult or SCTF staff member. You shall remain at least 200 feet away from any bus stop, whether it is a school or public bus stop, at all times.
- 22) You will not knowingly possess any materials depicting children in any state of undress, including catalogs, advertisements, movies, or stories depicting children or children's themes without approval of the SOTP. However, with the approval of the SOTP, you may be able to purchase or possess appropriate materials, including pictures of adults, to aid in arousal reconditioning.
- 23) You will not enter any public washroom or other rest facility that has not first been checked for the presence of minors and/or adult females and is found by an approved monitoring adult or SCTF staff member to be free of minors and/or adult females immediately prior to entering the facility.
- 24) You will attend at least one Alcoholics Anonymous/Narcotics Anonymous meeting per week and provide verification of attendance to your CCO each week.
- 25) You will not have intentional contact with adult females, other than approved family members, without the presence of an approved monitoring adult or SCTF staff member, and without the approval of the supervising CCO, the SCTF, and the SOTP.
- 26) You shall not have any contact with any persons known to be felons including anyone convicted of a sex offense other than those individuals participating in sex offender treatment group or residing in the SCTF without the permission of the supervising CCO, the SOTP, and the SCTF representative.
- 27) You shall not use or possess alcohol or controlled substances without a valid written prescription from a licensed physician.
- 28) You shall not own, use, possess, or have access to any firearm or ammunition or other deadly weapon, except you may use kitchen utensils or work tools with permission of the SCTF.

If the Department of Corrections and the SCC, the SCTF, and/or the SOTP are unable to agree on any conditions, all agencies will defer to the Court's ruling on any condition in question. Mr. Ross will be subject to supervision by a clinical team that must form an agreement on conditions and any future changes. No one party has the unilateral authority to change or alter or impose conditions or grant permission for Mr. Ross to deviate in any way from all conditions set forth in his conditional release to the SCTF.

Respectfully submitted,



Linda G. McGrann
Community Corrections Officer
Lakewood Field Officer
Department of Corrections
10109 S. Tacoma Way, Bldg. C-4
Lakewood, WA 98499
(253) 589-7081

Distribution:

Original
Copy

Court
Assistant Attorney General, Todd Bowers
Defense Attorney, Mary Opgenorth
DOC Community Protection Unit, Kimberly Acker
Field File

Re: ROSS, Casper W.
DOC# 929680
4/19/2007 - 1 of 5



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

COURT - NOTICE OF VIOLATION

REPORT TO: The Honorable Stephanie Arend
Pierce County Superior Court

DATE: 4/19/2007

NAME: ROSS, Casper W.

DOC NUMBER: 929680

AKA: Ross, Cap

CAUSE: 98-2-03520-5 (01)

CRIME:

SENTENCE: Civil Commitment
under RCW 71.09

DATE OF SENTENCE: 6/10/98

**TERMINATION
DATE:** Annual Review

PRESENT LOCATION: Special Commitment
Center
P.O. Box 88450
Steilacoom, WA
98388

STATUS: Civil Commitment
CLASSIFICATION: UNC

MAILING ADDRESS:

PREVIOUS ACTION:

On 3/24/07, a Violation Report was submitted to the Court for Mr. Ross failure to comply with the requirements imposed by the Sex Offender Treatment Provider (SOTP) and failure to comply with a verbal instruction issued by his Community Correction Officer (CCO). Subsequently, the Transition Team withdrew its support for him to transition from the Secure Community Transition Facility (SCTF) to the community and also requested the Court to impose the additional condition of "*Mr. Ross shall not own, possess, borrow, loan, purchase, or view any video, movie or programming without the express written permission of the supervising CCO.*"

VIOLATIONS SPECIFIED:

The above-named offender has violated conditions of supervision by:

1. Being terminated from sex offender treatment with Lang Taylor on 4/18/07 in Pierce County, WA.
2. Failing to comply with the SOTP's treatment plan and treatment rules on or about 4/18/07 in Pierce County, WA.
3. Failing to comply with the rules of the SCTF on or about 4/18/07 in Pierce County, WA

SUPPORTING EVIDENCE:

Violations 1, 2 & 3 have been combined for clarity.

On 1/2/03, the Court entered an Order on Release to Less Restrictive Alternative (LRA) for Mr. Ross. Under the Findings of Fact, #7 condition reads, "The Respondent will be treated in the community by Lang Taylor, M.A. offender treatment provider certified pursuant to RCW 18.155, as required by RCW 71.09.092 (i)." Under the Order section, condition #4 reads, "The Respondent shall comply with Mr. Taylor's treatment plan and treatment rules for him."

On 1/7/03, Mr. Ross signed the Department of Corrections Conditions, Requirements and Instructions acknowledging his responsibility to abide by all conditions imposed by the Court, DOC, the SOTP, SCC and the SCTF. On 1/8/02 Mr. Ross signed a treatment contract with SOTP Lang Taylor, agreeing to abide by all rules of sex offender treatment.

On 4/18/07, I received a telephone call from Mr. Ross, who stated, "Last night while staff was going through my property, a picture of [female SCTF staff] Cutshaw in a bathing suit was found." I asked him why he had the picture and he stated, "I wanted it." I also asked him if she had willingly given it to him. He replied "no." He stated that this staff had brought in a photo album and was showing him pictures. He saw this particular picture and wanted it, so he took it "without her knowledge." I asked him if there was anything else he wanted to report, to which he replied "no." He stated he had already contacted his therapist, Lang Taylor, to report the violation as well.

Later on 4/18/07, Mr. Ross's Transition Team held a teleconference to discuss his recent disclosure, and the Transition Team's ongoing concerns regarding his LRA. According to Special Commitment Center (SCC) staff, on 4/17/07, Mr. Ross had requested some of his personal belongings be brought to the SCC, where he was being housed for mental health observation. Amongst the requested belongings, SCC staff discovered a picture of a "scantily clad" female SCTF employee, hidden behind a framed photograph of Mr. Ross's daughter. During a subsequent search of Mr. Ross's room, SCC staff located an additional picture of the same employee, standing outside of an amusement park. Of note, Mr. Ross failed to disclose that he had more than one photograph of this SCTF employee when he contacted his CCO and his SOTP.

Re: ROSS, Casper W.
DOC# 929680
4/19/2007 - 3 of 5

Lang Taylor's Treatment Rules #5 reads *You will keep your treatment team informed about your present address, phone numbers, employment situation, social contacts, auto descriptions and any other factors that are relevant to your movement and activities in the community.* Condition #6 reads **Honesty:** *Your honesty is demanded in treatment with me. It is a treatment rule violation if you lie to me or members of your treatment team. This includes lies of omission, as well as commission, and any other forms of deception. You shall submit to polygraphs and/or plethysmographs upon request.*

According to the attached letter, dated 4/18/07, Mr. Lang Taylor has terminated treatment with Mr. Ross (see attached), effective immediately, due to keeping secrets from his treatment provider and group, which brings into question his honesty. Mr. Taylor relayed that this brings into question his honesty. Healthy therapy can not take place under these circumstances.

SCC staff confirmed that Mr. Ross's failure to obtain permission and disclose possession of the photographs is considered "contraband" under SCC Policy #401: CONTRABAND, which states "Residents are permitted to have in their possession only those items and materials allowed by the Sexually Explicit and Related Materials policy (208). Policy 208 restricts all sexually oriented material except for limited purposes of evaluation. This policy further adds, "Individual still photographs must be approved by the assigned Forensic Therapist in consultation with Supervisor or a senior clinical staff person." At no time did Mr. Ross gain permission from his therapist or anyone else, to have pictures of Ms. Cutshaw.

ADJUSTMENT:

Additional concerns regarding Mr. Ross' were reported on 4/1/07, while visiting his cousin's house in Lakewood, WA. According to Lakewood Police Department Incident Report No. 070910650.1, Officer Sivankeo was conducting a DSHS trip verification on Mr. Ross. When the officer arrived at the house he did not see the DSHS van parked on the street. A neighbor informed him that the van was parked behind the house. The officer observed that the window covers were closed. He knocked on the back door but did not get any answer. While walking around the house, the officer knocked on a window next to the front door but did not get any answer. Finally he knocked on a kitchen window and observed a female come to the back door and answer it. She identified herself as Nora Cutshaw, designated DSHS staff for the trip. The officer noted that she appeared disheveled and her hair was down (from being pulled back) and she was fixing her shirt. The officer further reported while checking the DSHS portfolio, he observed Mr. Ross walk out of a bedroom, appearing disheveled and adjusting his belt. It was noted that there were no other occupants in the house. The following day, Mr. Ross was placed on facility restriction pending an investigation into the situation.

On 4/2/07 I received a telephone call from Mr. Ross, who reported that he was on facility restriction and did not know why. I asked him if he had done anything wrong, to which he replied he had not, but he thought SCC was "playing games just like they did during a prior incident that had supposedly occurred" between him and the same SCTF staff. He further stated he thought the SCC was "screwing with him" because they were "not supportive of any of his community LRA plans." He finally stated he thought he knew what the restriction was about but did not want to elaborate on it.

Re: ROSS, Casper W.
DOC# 929680
4/19/2007 - 4 of 5

On 4/4/07, I received another telephone call from Mr. Ross asking if I had seen the front page of The News Tribune. He was upset that Lakewood was "making an accusation that was not true." He stated that he had already contacted his attorney and was thinking of suing the Lakewood Police Dept. Mr. Ross then stated, "that woman is going to get rich". I asked him which woman he was referring to and he replied, "Nora." He went on to say he had spoken to his cousin, who thought Lakewood was retaliating against her for complaining about them harassing her and her roommate when Mr. Ross was not present.

On 4/6/07, a polygraph examination was conducted by Rick Minnich on Mr. Ross. According to the report, Mr. Ross showed deception when answering the following questions: Did RRC Cutshaw touch your penis or buttocks on April 1, 2007? Did you touch RRC Cutshaw's breast, vagina or buttocks on April 1, 2007? Did you and RRC Cutshaw touch each other's bare or clad genitals on April 1, 2007? According to the report, during the post-test interview, Mr. Ross was unable or unwilling to offer any reason for his deceptive responses.

After the examination, Mr. Ross contacted me and reported he had failed the polygraph test. He further reported that he thought he was being "set up" as the polygrapher would not tell him why he had failed. He further stated, "I did not touch that woman." Mr. Ross then demanded to have another polygraph test conducted by different polygrapher.

On 4/13/07, it was determined that Mr. Ross should be returned to the SCC for mental health observation. He contacted me prior to returning to the SCC and reported that he was told he would be going over for a 72-hour observation. I met with Mr. Ross while at the SCC on 4/17/07. He appeared to be upset, and stated that he was being lied to. He said he was originally told he would be returning to the SCTF on 4/16/07 and now no one knew when he would be returning. He stated he just wanted someone to give him a straight answer.

Since the above meeting with Mr. Ross, the undisclosed/unauthorized pictures of the female staff were found in his belongings. It appears that another SCTF resident contacted Mr. Ross and informed him that something had been located in his property, which I believed triggered Mr. Ross to call me and the SOTP Lang Taylor to report the violation. To date, he has not reported the existence of the second picture that was subsequently found among his belongings to either myself or his treatment provider, although I have given him every opportunity to disclose any additional information.

It should be noted, prior to these events, it was thought Mr. Ross had been doing exceptionally well. He had been employed full-time with Central Concrete for the past 6 months, doing concrete/masonry work. According to Mr. Ross he had saved over \$10,000 since starting work. He had developed numerous contacts/chaperones in the community over the past 4 years, since his release to the SCTF. All progress reports from the SOTP had indicated that Mr. Ross was doing well in treatment. However, as the above reported information clearly indicates, it is apparent that Mr. Ross has not grasped the key concept of transparency, which is essential to successful reintegration to, and risk management within, the community.

Re: HOSS, Casper W.
DOC# 929680
4/19/2007 - 5 of 5

RECOMMENDATION:

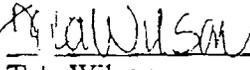
The Treatment Team is in agreement that Mr. Ross's LRA should be revoked and he should remain at the Special Commitment Center until such time as the Court is able to determine that either: (1) the state has failed to present prima facie evident that Mr. Ross continues to meet the definition of a sexually violent predator and that no proposed LRA is in his best interest and conditions cannot be imposed that would adequately protect the community; or (2) probable cause exists to believe that Mr. Ross' conditions has so changed that: a) he no longer meets the definition of sexually violent predator or b) release to a proposed LRA would be in his best interest, and conditions can be imposed that would adequately protect the community, and all requirements outlined under RCW 71.09.092 can be met and adhered to.

- Issue Summons Issue Bench Warrant Schedule Hearing
 Reinstate Parole No Action
- Other: Hearing scheduled 4/27/07 at 11:00am

I certify or declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.

Submitted By:

Approved By:



Teta Wilson
Community Corrections Officer III
PSOSU
10109 South Tacoma Way, C-4
Lakewood, WA 98495
(206) 983-7156



Richard Hendricks
Community Correction Supervisor

TW:TMW

Distribution:

ORIGINAL - Court

COPY - Prosecuting Attorney, Defense Attorney, File

Lang Taylor & Associates

Lang Taylor, MA, OSOTP
Marshall Kirkpatrick, MA, DCJS, ASOTP

Tel (253) 396-0222
Fax (253) 396-0480

April 16, 2007

Todd Bower
800 5th Ave. Suite 2000
Seattle, Wa 98104

Re: Casper Ross

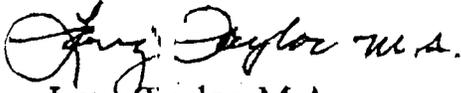
Dear Todd Bower::

This letter is intended as a termination of my willingness to provide therapy to Casper Ross. I was informed by telephone that Mr. Ross had in his personal possessions, hidden behind another photograph, a picture of a female staff member "clad provocatively". Mr. Ross admitted that he in a telephone call to me that he knew the "staff at the facility" had found that photo and he admitted to me (over the phone) that he took the photo with out the staff members knowledge (theft). Mr. Ross did not ever disclose the above information with me, prior to this coming to light, suggesting that he was keeping secrets from me and his treatment group. This would bring into question, his honesty. Healthy therapy can not take place under these circumstances.

I find it unfortunate that this case has reached this point. Mr. Ross, until this information came to light had been doing extremely well in his portrayed conduct and his progress in therapy. Until now he was not seen as a management problem.

Should Mr. Ross wish to re-instate therapy with this agency after he has met the requirements seen necessary by the SCC for future release on an LRA, I would be willing to discuss that future therapy with him

Respectfully,



Lang Taylor, M.A.

Registered Counselor, #207-01-0006893

Certified Sex Offender Treatment Provider, FC-22

NO. 37618-1-II

WASHINGTON STATE COURT OF APPEALS, DIVISION II

In re the Detention of:

CASPER ROSS,

Appellant

DECLARATION OF
SERVICE

FILED
COURT OF APPEALS DIV. II
STATE OF WASHINGTON
2009 JUN 19 PM 4:54

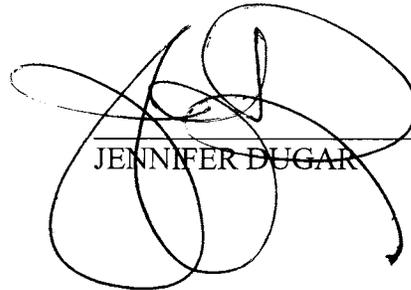
I, Jennifer Dugar, declare as follows:

On this 19th day of June, 2009, I deposited in the United States mail true and correct cop(ies) of Brief Of Respondent, postage affixed, addressed as follows:

Peter Tiller
P.O. Box 58
Centralia, WA 98531-0058

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

DATED this 19th day of June, 2009, at Seattle, Washington.


JENNIFER DUGAR

09 JUN 28 AM 11:16:3
STATE OF WASHINGTON
BY _____
DEPUTY

FILED
COURT OF APPEALS
DIVISION II