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I. STATEMENT OF FACTS

The State accepts the statement of facts as set forth by the defendant. Where additional information is needed, it will be supplemented in the argument section of the brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that there was a violation of the knock and announce (or knock and wait) rule in reference to the execution of a search warrant. The defense position is that the officers did not wait long enough before entering the residence after having knocked and announced their position of authority. The affidavit for search warrant and search warrant itself are contained as part of the appendices in the State's Response to Defendant's Motion to Suppress (CP 47). A copy of the State's response to the motion, with attachments, is attached hereto and by this reference incorporated herein. After hearing this matter, the trial court entered its Findings of Fact and Conclusions of Law dealing with the Criminal Rule 3.6 hearing. (CP 114). A copy of those findings of fact are attached hereto and by this reference incorporated herein.

Detective Cynthia Bull, a Deputy Sheriff for the Clark County Sheriff's Office, testified concerning the knock and announce. Her testimony at the time of the pretrial hearing, was as follows:

QUESTION (Mr. Sowder, Defense Counsel): You were present when they knocked and announced?

ANSWER: I was standing outside. I don't wear a uniform and I didn't have a vest on.

QUESTION: For the knock?

ANSWER: It was knocked and announced and entry was made.

QUESTION: Immediately?

ANSWER: Not immediately. Knock, announce, wait and then the door was opened.

QUESTION: How long?

ANSWER: I can't tell you, long enough to say the knock, sheriff's office, search warrant, and the door was opened. So –

QUESTION: So fairly immediately?

ANSWER: Not immediately, but there was a knock, announce, wait and the door was opened.

QUESTION: So it was a wait, like, one or two seconds?

ANSWER: It was – well, it was based on his past history, so it was not an immediate entry. But there was a knock and announce. He – from what he's describing, no, he wouldn't have had time to wander the apartment.

QUESTION: Well –

ANSWER: My understanding is, he was in the bathroom.

QUESTION: It was not a knock and – it was not a no knock and announce warrant?

ANSWER: Exactly.

QUESTION: It was a knock and announce warrant.

ANSWER: It was a knock and announce warrant, yes.

QUESTION: And the witness just brought up another question. So they knock and they wait a very – seconds?

ANSWER: I've been – I've been on many of those. It's knock, announce and the door is opened up.

QUESTION: I've seen them, I've timed them. They're like three seconds. I timed them once across the street from a house –

ANSWER: They're generally pretty quick.

QUESTION: - but I'm not the one testifying here. But I got, like, three second, it's about like that?

ANSWER: Maybe three to five.

QUESTION: Oh, maybe generous – five.

ANSWER: I'll be generous.

-(RP Vol. 1 156, L24 – 158, L13)

The defendant contends the police officers conducted an unlawful search because they did not wait a reasonable time after knocking and

announcing their purpose before entering the residence. RCW 10.31.040, the knock and announce rule, provides that police are required to knock, announce their identity and purpose, and wait a reasonable length of time for the occupants to voluntarily admit them. State v. Cardenas, 146 Wn.2d 400, 411, 47 P.3d 127, 57 P.3d 1156 (2002); State v. Johnson, 94 Wn. App. 882, 889, 974 P.2d 855 (1999). After a reasonable wait, the police are allowed to make a forcible entry. RCW 10.31.040; Johnson, 94 Wn. App. at 890. Whether an officer waited a reasonable time before entering a residence depends upon the circumstances of each case. State v. Richards, 136 Wn.2d 361, 374, 962 P.2d 118 (1998). The Appellate Court defers to the trial court's resolution of this issue because it is best equipped to evaluate contradictory testimony. Johnson, 94 Wn. App. at 889-90. In determining whether the officers waited an appropriate period before entering, the trial court must consider the purposes of the knock and announce rule: "(1) to reduce the potential for violence to both occupants and police; (2) to prevent unnecessary destruction of property; and (3) to protect the occupants' right to privacy." Id. at 890; see also Cardenas, 146 Wn.2d at 411.

A police officer who identifies himself and announces that he has a search warrant has implicitly demanded admission. Because it is undisputed that the officers identified themselves and stated they had a

search warrant, the issue is whether the officers waited a sufficient time between the announcement and the entry. State v. Lehman, 40 Wn. App. 400, 404, 698 P.2d 606, review denied, 104 Wn.2d 1009 (1985); State v. Richards, 136 Wn.2d 361, 962 P.2d 118 (1998).

The Appellate Court defers to the trial court's resolution of factual issues because it sits “closest to the trial scene and [is] thus afforded the best opportunity to evaluate contradictory testimony.” State v. Hill, 123 Wn.2d 641, 646, 870 P.2d 313 (1994) (*quoting* Haynes v. Washington, 373 U.S. 503, 516, 83 S. Ct. 1336, 10 L. Ed. 2d 513 (1963)). Whether an officer waited a reasonable time before using force to enter a residence depends on the circumstances of the case. State v. Edwards, 20 Wn. App. 648, 651, 581 P.2d 154 (1978). What constitutes a reasonable time depends on all the facts and circumstances, and is determined on a case by case basis. State v. Amezola, 49 Wn. App. 78, 84, 741 P.2d 1024 (1987); State v. Woodall, 32 Wn. App. 407, 411, 647 P.2d 1051 (1982), rev'd on other grounds, 100 Wn.2d 74, 666 P.2d 364 (1983).

The State submits that the matter was properly determined by the trial court using its discretion. The State further submits that there is nothing here to overturn the trial court's decision.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that one of the instructions given by the court was problematic. The defense maintains that it is internally inconsistent and that it leaves the jury with an impression that the defense only applies if the defendant presents evidence.

The specific instruction referred to is part of the Court's Instructions to the Jury (CP 251), a copy of which is attached hereto and by this reference incorporated herein. The specific instruction is number 11 and reads as follows:

It is not a defense to the charge of Rape of a Child in the Second Degree if at the time of the act the defendant did not know the age of [L.M.] or the defendant believed him to be older.

It is, however, defense to the charge of Rape of a Child in the Second Degree that at the time of the acts the defendant reasonably believed [L.M.] was at least 14 years of age, based upon declaration said to the age by [L.M.].

The defendant has a burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means you must be persuaded, considering all the evidence of the case, that it is more probably true than not true. If you find the defendant has established this defense, it will be your duty to return a verdict of not guilty as to the charge of Rape of a Child in the Second Degree.

This particular instruction was proposed by the defense. It is contained in the Defendant's Proposed Instructions (CP 244). That particular instruction as proposed by the defense reads as follows:

It is not a defense to the charge of Rape of a Child in the Second Degree if at the time of the act the defendant did not know the age of [L.M.] or the defendant believed him to be older.

It is, however, defense to the charge of Rape of a Child in the Second Degree that at the time of the acts the defendant reasonably believed [L.M.] was at least 14 years of age, based upon declaration said to the age by [L.M.].

The defendant has a burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means you must be persuaded, considering all the evidence of the case, that it is more probably true than not true. If you find the defendant has established this defense, it will be your duty to return a verdict of not guilty as to the charge of Rape of a Child in the Second Degree.

The State submits that the defense has no reason to object to this pattern instruction nor is there any basis for a claim of ineffective assistance of counsel.

A defendant is precluded from challenging an instruction he proposed:

The instruction given is one which the defendant himself proposed. A party may not request an instruction and later complain on appeal that the requested instruction was given. Ball v. Smith, 87 Wn.2d 717, 556 P.2d 936 (1976); Vangemert v. McCalmon, 68 Wn.2d 618, 414 P.2d 617

(1966). The defendant's challenge to the instruction must therefore fail.

-(State v. Henderson, 114 Wn.2d 867, 870, 792 P.2d 514 (1990) (*quoting State v. Boyer*, 91 Wn.2d 342, 344-45, 588 P.2d 1151 (1979)) (emphasis added by Henderson court)).

This has been the law for more than 20 years. See, e.g., Boyer, 91 Wn.2d 342, 588 P.2d 1151 (a unanimous decision of our Supreme Court). The State submits that the defendant is precluded from challenging the court's giving of the instruction he proposed.

Nor may the defendant circumvent this longstanding rule (that a party may not request an instruction and later complain on appeal that the requested instruction was given) by asserting that his counsel was ineffective in requesting that the court give the pattern jury instruction. In State v. Summers, 107 Wn. App. 373, 380-82, 28 P.3d 780, 43 P.3d 526 (2001), the defendant advanced virtually identical arguments in challenging his conviction for unlawful possession of a firearm under a jury instruction that was previously held defective in State v. Anderson, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000). The Appellate Court rejected Summers's claim as invited error.

When a defendant proposes an instruction that is identical to the instruction the trial court gives, the invited error doctrine bars an appellate court from reversing the conviction because of an error in that jury instruction. State v. Studd, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999). This holds true even if the defendant merely requests a

standard Washington Pattern Jury Instructions: Criminal instruction approved by the courts. Studd, 137 Wn.2d at 548. In Studd, the defendant challenged the trial court's self defense (WPIC) 16.02 (2d ed. 1994). This instruction misdefined self defense, thus relieving the State of its burden of properly proving beyond a reasonable doubt that the defendant did not act in self defense. The Studd Court held that the WPIC instruction was unconstitutional, but nevertheless it affirmed the convictions because the defendant had requested the identical instruction. Studd, 137 Wn.2d at 546-47. The Court held that the invited error doctrine was a "strict rule" to be applied in every situation where the defendant's actions at least in part cause the error. Studd, 137 Wn.2d at 547.

Here, Summers proposed an instruction identical to the "to convict" instruction the trial court gave. Thus, he invited any error and we need not reverse based upon Smith.

Ineffective Assistance of Counsel

Anticipating that the invited error doctrine applies, Summers next argues that his trial counsel was ineffective for proposing the flawed "to convict" instruction. Our Supreme Court's holding in Studd, however, also defeats this claim.

Representation is deemed constitutionally sufficient unless (1) considering all the circumstances, the attorney's performance was below objective standards of reasonableness, and (2) with reasonable probability, the outcome would have differed if the attorney had performed adequately. State v. Stenson, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997) (*citing* Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), cert. denied, 523 U.S. 1008 (1998). We engage a strong presumption that a defendant received effective representation. State v. Brett, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 133 L. Ed. 2d 858, 116 S. Ct. 931 (1996). And the defendant must show that there were no legitimate strategic or tactical rationales

for the challenged attorney conduct. State v. McFarland, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995).

In Studd, the defendant also claimed that his attorney was ineffective for proposing a flawed self defense instruction. At the time of trial, however, case law held that the proposed self defense instruction was constitutional. Thus, our Supreme Court rejected this claim because "[trial] counsel can hardly be faulted for requesting a jury instruction based upon a then-unquestioned WPIC 16.02." Studd, 137 Wn.2d at 551.

-(State v Summers, 107 Wn. App. at 382-383)

There is a strong presumption of effective representation of counsel, and the defendant has the burden to show that based on the record, there are no legitimate strategic or tactical reasons for the challenged conduct. State v. McFarland, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995). As the Supreme Court explained in Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984):

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Cf. Engle v. Isaac, 456 U.S. 107, 133-134[, 102 S. Ct. 1558, 1574-75, 71 L. Ed. 2d 783] (1982). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a

strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." See Michel v. Louisiana, [350 U.S. 91, 101, 76 S. Ct. 158, 100 L. Ed. 83 (1995)].

-(Strickland, 466 U.S. at 689).

The defense proposed this instruction. After proposing the instruction, it was given by the trial court. The State submits that the defense has no right to complain about the giving of this particular instruction.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that the trial court denied the defendant's right to a fair trial by refusing to allow him to present relevant evidence. Specifically, a complaint that the defendant was unable to present evidence concerning his belief that the victim was a different age.

This is a difficult issue to address because it appears that the trial court provided all of the necessary ability for the defense to not only argue this point, but to also present it adequately to a jury at the time of closing arguments. The first thing that must be indicated is that the defendant did not testify in this case. Yet, he was able through the officers to get into

evidence that his claim to the officers that he believed the victim to be of a different age based on statements that that victim made to him. (RP 624, L17-21) And also found at RP 633. That testimony was as follows:

QUESTION (Defense Counsel): Okay. And he also – when you quoted him in the report about references to [LM], he used the term kid, right?

ANSWER (Detective Waddell): Kid? He – he said boy.

QUESTION: Okay. And he indicated that – or stated to you that the boy told him he was 18 – [LM] told him he was 18.

ANSWER: Yes, he told me he – the boy told him he was 18.

QUESTION: That he'd finished high school and was working as a care giver at a retirement home?

ANSWER: Yes.

-(RP 633, L12-21)

The defense in this matter was also able to adequately discuss this with the jury at the time of closing argument.

Well, this fits nicely into what I consider defendant's burden of proof here. He's trying to establish that [L.M.] presents himself as being over – being 18 on the chat line. It obviously is someone who's more sexually active than you think a 13 year-old would be who is projecting himself to be older by his own statements, and also by his desperate 15 telephone calls to get him to be picked up, to come and get him for a party to hang out.

And it fits pretty well and nicely into this declaration that he's 18. Now, we don't have to have Mr. Dillon believing

he's 18. We don't – I mean, that's what he said – that's what [L.M.] said his age was on the chat line. Mr. Dillon essentially told me the kid said he was 18, but what we need to actually determine is whether or not, based on his acts, his statements and his conduct, is it reasonable for Mr. Dillon to believe that he's at least 16 because that's the age of consent? And take it one step further, is it reasonable for him to believe he's at least 14?

That's what you have to prove – that's what the State has to prove beyond a reasonable doubt, that Mr. Dillon did not have a reasonable belief that [L.M.] was under 14. Clearly, when you have [L.M.] calling him 15 times wanting him to come over here obviously for some sort of likely sexual encounter – that's what I think the purpose was – that he's calling him for that, saying he's 18, projecting himself to be that way, when it's likely that Mr. Dillon can reasonably conclude he may not be 18, but he must at least be 16 and he's probably clearly – how would you say it – less than – not less than 14 because the statute requires – the crime requires that he be less than 14.

-(RP 770, L2 – 771, L9)

RCW 9A.44.030. Defenses to prosecution under this chapter:

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section **based upon declarations as to age by the alleged victim.**

Jury instructions may be tailored to the facts of a given case. Instructions satisfy the fair trial requirement when, taken a whole, they properly inform the jury of the law, are not misleading, and permit the parties to argue their theories of the case. State v. Kennard, 101 Wn. App. 533, 536-37, 6 P.3d 38 (2000). "The wording of jury instructions is left to the discretion of the trial court." Kennard, 101 Wn. App. at 537. It is a defense to this sex offense that the defendant reasonably believed the alleged victim to be at least 14 "based upon declarations as to age by the alleged victim." RCW 9A.44.030(2). For the statutory defense to apply, there must have been some kind of explicit assertion of age by the victim. State v. Bennett, 36 Wn. App. 176, 182, 672 P.2d 772 (1983).

The defendant testified that neither girl told him how old she was. Defendant's legal argument is that "declarations" as to age by the victim can consist of her behavior appearance and general demeanor. We disagree. A reading of RCW 9A.44.030(2) makes it clear that something more positive is intended. Without the proviso, the statute states that it is no defense that a defendant believes the victim to be older. The rather generalized, nonassertive manifestations of appearance, behavior and demeanor are precisely the type of conduct giving rise to such a belief. The proviso then gives protection to the person who, in good faith, acts upon some kind of explicit assertion from the victim. Here, there was no such explicit assertion from either victim; the statutory defense was not available to Bennett.

The State submits that there is nothing in this record to establish that the trial court prevented the defendant from presenting its defense. The defense was able to establish its claim that the victim made specific representations to him of age. This was done even though the defendant did not testify in the case. Clearly this does not demonstrate that the court is preventing the defendant from attempting to establish this defense. As indicated, there is nothing in this record to support the allegation by the defendant that the trial court denied him his rights to present relevant exculpatory evidence.

Another way of approaching this same argument deals not only with this third assignment of error, but also with the fourth assignment of error that follows. There simply was no showing at the trial court level of something inappropriate or rights being denied to the defendant. In other words, the trial court was not put on notice that there was any difficulty. Perhaps if it had been put on notice it may have changed or modified in some way its rulings, but it was never brought up at the trial court level and thus, the State submits, there is no adequate justification for the claim of lack of substantial evidence in either the third or fourth assignments of error.

The admission of relevant evidence is governed by ER 401 and is within the sound discretion of the trial court. State v. Mak, 105 Wn.2d

692, 702, 718 P.2d 407, cert. denied, 479 U.S. 995 (1986). However, even relevant evidence may be excluded by the trial court if its probative value is substantially outweighed by the danger of unfair prejudice. Mak, at 703; ER 403. This court reviews evidentiary rulings for an abuse of discretion. State v. Halstien, 65 Wn. App. 845, 849-50, 829 P.2d 1145 (1992), aff'd, 122 Wn.2d 109, 857 P.2d 270 (1993). Evidentiary rulings generally are not of constitutional magnitude and therefore require reversal only if the defendant is prejudiced. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). And that prejudice is not presumed. *Id.* The error is prejudicial only if "within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981).

The State responds that this issue is not preserved for appeal because there was no offer of proof. In order to obtain appellate review of the trial court's exclusion of evidence, an offer of proof must be made that fairly advises the trial court whether the evidence is admissible. Northern State Constr. Co. v. Robbins, 76 Wn.2d 357, 366, 457 P.2d 187 (1969).

An offer of proof serves three purposes: it informs the court of the legal theory under which the offered evidence is admissible; it informs the judge of the specific nature of the offered evidence so that the court can assess its admissibility; and it creates a record adequate for review. Mad

River Orchard Co. v. Krack Corp., 89 Wn.2d 535, 537, 573 P.2d 796 (1978); State v. Negrin, 37 Wn. App. 516, 525, 681 P.2d 1287, review denied, 102 Wn.2d 1002 (1984). See also State v. Williams, 34 Wn.2d 367, 384, 386-87, 209 P.2d 331 (1949). The offer of proof allows the trial court to properly exercise its discretion when reviewing, "revaluating [sic]", and, if necessary, revising its rulings. Cameron v. Boone, 62 Wn.2d 420, 425, 383 P.2d 277 (1963). It is the duty of a party offering evidence to make clear to the trial court what it is that he offers in proof, and the reason why he deems the offer admissible over the objections of his opponent, so that the court may make an informed ruling. State v. Ray, 116 Wn.2d 531, 538, 806 P.2d 1220 (1991).

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant is a claim of lack of substantial evidence concerning the kidnapping charge. The State submits that this dovetails into the previous discussion. It is a little bit different in that the kidnapping aspect of this was a major focus of the defense at the time of closing argument. The prosecution discussed the question of the kidnapping with the jury and indicated as follows as part of its closing argument:

Well, let's get this straight right now. We created laws in this state – a lot of laws that relate to a lot of different

things, okay? [L.M.] can't consent to enter into a contract, he can't consent to a number of different things and he cannot, under the law, as you've been instructed – can't consent to sex, sexual relations. He can't also consent – if you look at this instruction – acquiescence of the child or acquiescence of his parent, you're not going – you're not going to find here a way, I think, to define the actions out of this instruction.

What occurred here was an abduction, putting him into the car, secreting – and secreting meaning putting him somewhere no one else could see him – transporting him across state lines. You can look at the car first, but then when he goes to the State of Washington and he walks through the portal. And when I say the portal, he walks through this front door. We all know from the testimony it's the defendant's front door.

Once that door closes, that is secretive, period. No one is going in there. If it wasn't completed when he got in the car, it was completed before any sexual conduct occurred, and it was with the clear intent to have sexual relations or intercourse as defined by the law. And in fact that's exactly what happened. In fact, not only did that happen, but we have [L.M.] describe it and the defendant describe it to law enforcement, intercourse.

-(RP 750, L7 – 751, L8)

After the direct closing by prosecution defense responded to this issue as follows:

Once he's met that burden of proof, then the law requires – the legislature's protecting a class of people like him that could be caught up in something – yeah, determine he's not guilty because that's the logical conclusion. So that's what you get to. As to kidnapping, I went through a little red

chart over there, but there's no substantial restriction of [L.M.]'s movement.

As a result, there's no abduction, there's no restraint on him, no restriction. He could go where he want, came back when he wanted. It simply doesn't meet the element of the crime of restriction because that must be substantial and must certainly exist, and nothing's there.

So what you come to is a conclusion that he can't be guilty of it as charged, as Rape of a Child in the Second Degree or Kidnapping for the reasons I just went through.

There's a part we need to talk about because if you get through those elements and decide well, may be he is guilty of Kidnapping With Sexual Motivation – again, you have to determine whether he reasonably could have been determined to be 15, and then really sort of my same arguments apply. [L.M.]'s always presenting himself to be older, so there's not a lack of – there's certainly a reasonable belief he was at least 15.

But that's not the core of my argument. The core of my argument's basically what I summarized at the last minute, is that he's met his – Mr. Dillon's met his burden of proof based on [L.M.]'s declarations, his conduct. That he had a reasonable belief that he was at least 14, which if that's what he reasonably believed by 51 percent of the evidence, he can't be guilty of Rape in the Second Degree. That's what the law requires. And there's no Kidnapping because there's no substantial restriction on [L.M.]'s movements.

-(RP 779, L5 – 780, L13)

§ 9A.40.020. Kidnapping in the first degree

(1) A person is guilty of kidnapping in the first degree if he intentionally abducts another person with intent:

(a) To hold him for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

(c) To inflict bodily injury on him; or

(d) To inflict extreme mental distress on him or a third person; or

(e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony.

§ 9A.40.010. Definitions

The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force;

(3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

Evidence is sufficient to ‘support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Luther, 157 Wn.2d 63, 77, 134 P.3d 205 (*quoting State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), cert. denied, 127 S. Ct. 440 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. State v. Luther, 157 Wn.2d at 77-78 (*citing State v. Alvarez*, 105 Wn. App. 215, 223, 19 P.3d 485 (2001)).

In considering the sufficiency of evidence, the Appellate Court gives equal weight to circumstantial and direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). The Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (*citing State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). It does not substitute its judgment for that of the jury on factual issues. State v. Israel, 113 Wn. App. 243, 269, 54 P.3d 1218 (2002) (*citing State v. Farmer*, 116 Wn.2d 414, 425, 805 P.2d 200, 812 P.2d 858 (1991)), review denied, 149 Wn.2d 1013 (2003). “In determining whether the requisite quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only

that substantial evidence supports the State's case.” State v. Jones, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), review denied, 138 Wn.2d 1003 (1999). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 112, 937 P.2d 154, 943 P.2d 1358 (1997), cert. denied, 522 U.S. 1077, 139 L. Ed. 2d 755, 118 S. Ct. 856 (1998); World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991).

The State submits that there is ample evidence for the tier of fact on both the question of age and also the concept of kidnapping for sexual motivation.

Another aspect of the fourth assignment of error raised by the defendant is similar to the previous concept dealing with substantial evidence in the record to support Kidnapping in the First Degree. The issue appears to be spelled out on Page 41 of the Appellant’s Brief where he indicates as follows: “In the case at bar the evidence presented at trial, even seen in a light most favorable to the State, fails to prove either that the defendant “restricted [L.M.]’s movements” or that he “secreted or held” [L.M.] “in a place where he was not likely to be found.””

The Court’s Instructions to the Jury (CP 251) set out the elements that need to be proven to establish a Kidnapping in the First Degree.

Instruction No. 13 is the definition of Kidnapping in the First Degree,
which reads as follows:

A person commits the crime of Kidnapping in the First Degree when he intentionally abducts another person with intent to facilitate the commission of a Rape of a Child in the Second Degree.

The elements of the crime were set out in Instruction No. 14,
which provides as follows:

To convict the defendant of the crime of kidnapping in the first degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about August 6, 2008, the defendant intentionally abducted L.M.M.,
- (2) That the defendant abducted that person with intent to facilitate the commission of Rape of a Child in the Second Degree; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), and (3) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing the evidence, you have a reasonable doubt as to any one of elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

The conduct which is required dealing with abducting and restraint
are further spelled out in Instruction No. 15, which provides as follows:

Abduct means to restrain a person by secreting where that person is not likely to be found.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner which interferes substantially with that person's liberty. Restraint is "without consent" if it is accomplished any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

Prior to modifications of the kidnap statute the concepts of abduction and restraint included concepts of enticing someone. So for example, there was substantial evidence in the record, in one instance, where a defendant's conduct in offering money to a 14 year-old girl to help set up and operate a first aid class was offered by the defendant and he requested that she accompany him in his automobile to his office, when in fact he had no office and was unemployed, that that constituted enticing someone. State v. Missmer, 72 Wn.2d 1022, 435 P.2d 638 (1967).

Defendant first argues that under RCW 9.52.010(2), *actual concealment* must be proven to take the case to the jury and that no evidence of concealment was presented. Actual concealment is not a necessary element of the offense under the statute. Defendant cites State v. Hoyle, 114 Wash. 290, 194 Pac. 976 (1921) and State v. Berry, 200 Wash. 495, 93 P.2d 782 (1939), to support his position that actual concealment is a necessary element of the crime, but in neither case was the issue of actual concealment as opposed to intent to conceal before the court. The proof need only show that defendant led, took, enticed away or

detained the child *with intent* to conceal her from her parents. See State v. Pudman, 65 Ariz. 197, 177 P.2d 376 (1946); People v. McGinnis, 55 Cal. App. 2d 931, 132 P.2d 30 (1942); 68 A.L.R. 719. Moreover, defendant seems to misunderstand the meaning of the word "conceal" as it is used in the statute. In People v. McGinnis, *supra*, at 936, the court held:

The common definition of the word "conceal" is "to hide or withdraw from observation; to cover or keep from sight." *It does not necessarily mean that the concealed individual or hidden object may not be located or found by reasonable means of discovery.* (Italics ours.)

Clearly, the girl could have been as well concealed from her parents in defendant's automobile traveling along one of our high-speed freeways as she could have been in a deserted cabin in the country.

Defendant next contends that there was no evidence that he did "lead," "take," "entice away," or "detain" the girl as those words are used in RCW 9.52.010(2). Websters New Twentieth Century Dictionary (2d ed. 1960) defines "entice" as meaning "to allure; to lead on by exciting hope of reward or pleasure; to tempt" and defines "lead" as meaning "to direct; . . . to draw; to entice; to allure; . . . to induce; to prevail on; to influence." Similarly, Blacks Law Dictionary (4th ed. 1951) defines "entice" as meaning "[t]o wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax, or seduce . . . [t]o lure, induce, tempt, incite, or persuade a person to do a thing." In the case at bar, defendant's offering a 14-year-old child a job with payment of \$1.60 per hour and requesting that she come with him to his office, when defendant in fact had no office and was unemployed, clearly constituted "enticing away" as those words are used in the aforementioned statute.

Defendant next argues that there was no evidence pertaining to his acts or conduct from which the jury could find that he had the requisite intent to conceal the child

from her parents. Substantial evidence must exist to sustain a finding of this specific intent. All the acts and conduct of the defendant, together with all the other circumstances in the case, will be considered. As stated in State v. LaVine, 68 Wn.2d 83, 86, 411 P.2d 436 (1966):

It is not necessary that the assailant express his intent verbally. A jury can infer from his conduct and from the surrounding circumstances that he intended to achieve his purpose

Defendant contends that he intended to return the girl to the park by the appointed time, that she was not "enticed" since she was not particularly interested in his job offer, and that it was not shown that she was concealed from her parents since he at all times drove on main, well-traveled thoroughfares in and around the Olympia area. But as we said in State v. Jackson, *ante* p. 50, 60, 431 P.2d 615 (1967):

All of these matters going to the question of parental consent and intent to conceal the girl from her parents were quite properly presented to the jury. But, they were just that -- matters of defense, facts to be considered by the jury in determining the issues of parental consent and intent to conceal.

The evidence, from which the jury could have inferred defendant's intent to conceal the girl, established that (1) defendant "enticed" the girl into his car for a ride to his "office" with offers of employment and payment; (2) at that time he had no office and was unemployed; (3) while driving the car, he felt the "pressure points" on the child's arm and leg and talked with her about delivery of babies; and (4) he was headed out a freeway away from the Olympia area shortly before the time the girl was to be met by her friend's father. In State v. Jackson, *supra*, at 61, we said:

In reviewing a criminal conviction, we do not say that a court of appeals is completely devoid of power to examine

the record and ascertain therefrom if the evidence in sum proves a crime and that the defendant committed it. There must be some small interstice left for the intervention of appellate jurisdiction where, despite a verdict of conviction, the whole record does not prove a crime or defendant guilty. But, notwithstanding this reservation of appellate power, the verdict of the jury remains paramount. Where there is substantial evidence to prove a crime and the defendant's commission of it, the jury is the sole and exclusive judge of the evidence and its verdict is conclusive as to the facts. State v. Davis, 53 Wn.2d 387, 333 P.2d 1089 (1959).

Defendant also contends that if we define "lead, take, entice away or detain a child" and "intent to conceal" as embracing the conduct evidenced in the instant case, then the very definition embracing that conduct is unconstitutionally vague under the sixth and fourteenth amendments of the United States Constitution and under Const. art 1, § 22. The general principles governing this final issue are cogently explained in State v. Galbreath, 69 Wn.2d 664, 419 P.2d 800 (1966), beginning at 667.

We hold that the words "lead, take, entice away or detain . . . with intent to conceal him from his parent" as used in RCW 9.52.010(2) are "common words, of common usage, and enjoy a commonly recognized meaning among people of common intelligence." Galbreath, *supra*, at 668. The statute involved in the case at bar defines with sufficient clarity for persons of ordinary intelligence that conduct which is prohibited and requires no speculation as to its meaning or application.

-(State v. Missmer, 72 Wn.2d at 1026-1028)

The record in our case indicates a willingness on the part of the defendant to pick up people online on computers and actually then brought

that person to a residence located in another state for purposes of sexual activity. As explained by the prosecutor in closing argument:

What occurred here was an abduction, putting him into the car, secreting – and secreting meaning putting him somewhere no one else could see him – transporting him across state lines. You can look at the car first, but then when he goes to the State of Washington and he walks through the portal. And when I say the portal, he walks through this front door. We all know from the testimony it's the defendant's front door.

Once that door closes, that is the secretive, period. No one is going in there. If it wasn't completed when he got in the car, it was completed before any sexual conduct occurred, and it was with the clear intent to have sexual relations or intercourse as defined by the law. And in fact that's exactly what happened. In fact, not only did that happen, but we have [L.M.] describe it and the defendant describe it to law enforcement, intercourse.

-(RP 750, L18 – 751, L8)

The State has spelled out in the previous argument the nature of substantial evidence on the record to support the matter going to the trier of fact. The State submits that there is sufficient evidence in the record to allow the trier of fact to determine whether or not the conduct of the defendant constituted Kidnap in the First Degree.

VI. RESPONSE TO ASSIGNMENT OF ERROR NO. 5

The fifth assignment of error raised by the defendant is a claim that the trial court erred in accepting the jury's special verdict finding that the

defendant was a predator. The claim was that there was insufficient evidence to support this concept.

As indicated by the defendant in his brief, the concept of predator was primarily based on the fact of the defendant being a stranger to the victim.

§ 9.94A.030. Definitions (as amended by 2010 c 224)

(36) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(47) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

The State has previously discussed in some detail the concept of substantial evidence in the record and incorporates that argument and case law by reference. The evidence in this case quite clearly demonstrates that

the defendant was a stranger to the victim. The defendant had assumed a persona to make contact with and entice the victim into a situation of sexual involvement. This was done without knowledge of the child's parents and was done within the previous 24 hours. Prior to that there had been contact on the internet. The State submits that this time of grooming was a period of time when the defendant was not actually representing himself but had assumed a role for purposes of making contact with and ultimately preying on the child. Thus, the predatory activities of the defendant clearly demonstrate that there was sufficient and substantial evidence in the record to allow this question to go to the jury.

VII. RESPONSE TO ASSIGNMENT OF ERROR NO. 6

The sixth assignment of error raised by the defendant is a claim that there's been a violation of the double jeopardy statutes. Specifically, the indications are that the defendant being convicted of the kidnapping was also convicted of an enhancement penalty dealing with that kidnap and therefore this would constitute double jeopardy.

Washington courts have repeatedly held that double jeopardy is not offended by, for example, weapon enhancements. The concept has recently been discussed in our State Supreme Court in State v. Aguire, 168 Wn.2d 350, 367, 229 P.3d 669 (2010):

5. Double Jeopardy

The fifth and final claim that Aguirre raises on appeal is that the addition of a deadly weapon enhancement to his sentence for second degree assault violated double jeopardy. The double jeopardy clauses of the federal and state constitutions function identically to prevent defendants from being twice put in jeopardy for the same crime. See State v. Daniels, 160 Wn.2d 256, 261, 156 P.3d 905 (2007); State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995); State v. Schoel, 54 Wn.2d 388, 391, 341 P.2d 481 (1959) (both clauses are “identical in thought, substance, and purpose”). Double jeopardy claims raise questions of law and are accordingly reviewed de novo on appeal. Daniels, 160 Wn.2d at 261 (*citing* State v. Jackman, 156 Wn.2d 736, 746, 132 P.3d 136 (2006)).

Washington courts repeatedly have held that double jeopardy is not offended by weapon enhancements even when being armed with the weapon is an element of the underlying crime. See, e.g., State v. Claborn, 95 Wn.2d 629, 636-37, 628 P.2d 467 (1981); State v. Husted, 118 Wn. App. 92, 95-96, 74 P.3d 672 (2003) (“a person who commits certain crimes while armed with a deadly weapon will receive an enhanced sentence, notwithstanding the fact that being armed with a deadly weapon was an element of that offense.” (*quoting* State v. Caldwell, 47 Wn. App. 317, 320, 734 P.2d 542 (1987))). Aguirre alleges that these cases must be reconsidered following Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). However, we recently rejected this argument in State v. Kelley, 168 Wn.2d 72, 226 P.3d 773 (2010). Consistent with that holding, adding a deadly weapon enhancement to Aguirre's sentence for second degree assault, an element of which is being armed with a deadly weapon, did not offend double jeopardy. Consequently, we affirm the Court of Appeals decision rejecting Aguirre's double jeopardy claim.

Numerous Washington cases have held that sentencing enhancements do not violate the double jeopardy clause even when the enhancement constitutes an element of the underlying conviction. See State v. Kelley, 146 Wn. App. 370, 374-75, 189 P.3d 853 (2008), review granted, 165 Wn.2d 1027 (2009); State v. Tessema, 139 Wn. App. 483, 493, 162 P.3d 420 (2007), review denied, 163 Wn.2d 1018 (2008); Nguyen, 134 Wn. App. at 866; State v. Caldwell, 47 Wn. App. 317, 319, 734 P.2d 542, review denied, 108 Wn.2d 1018 (1987); State v. Pentland, 43 Wn. App. 808, 811, 719 P.2d 605, review denied, 106 Wn.2d 1016 (1986). Although these cases deal with the sentencing enhancement of being armed with a deadly weapon while committing the underlying offense, the same principles should apply to the enhancement of committing an offense that involves a “destructive and foreseeable impact on persons other than the victim” because the legislature clearly authorized additional punishment under either aggravating factor. RCW 9.94A.535(3)(r).

The State submits that the double jeopardy rule does not apply for the purpose of sentence enhancements as set forth in our case.

VIII. CONCLUSION

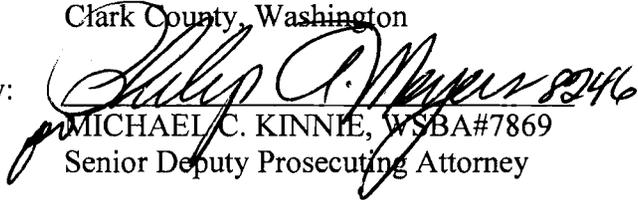
The trial court should be affirmed in all respects.

DATED this 13 day of October, 2010.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

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FILED
MAR 16 2009
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,
Plaintiff,
v.
STEVEN MONROE DILLON,
Defendant.

No. 08-1-01650-1
STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
SUPPRESS (Pursuant to CrR 3.6)

I. RESPONSE TO MOTION TO SUPPRESS EVIDENCE

COMES NOW Plaintiff, the State of Washington, by and through Clark County deputy prosecuting attorney, Alan E. Harvey, and responds to the defendant's motions to suppress and respectfully requests that the court denies the above mentioned defendant's motions on the facts and argument set out below.

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SV

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3 **II. MEMORANDUM IN SUPPORT OF THE STATE'S RESPONSE.**

4 **A. Procedural History**

5
6 On the 29th of September 2008, the defendant made a first appearance in Clark
7 County Superior Court. On the 10th of October 2008 the defendant was arraigned on
8 an information charging the following: Count I, Rape Of A Child In The Second Degree
9 pursuant to RCW 9A.44.076; Count II, Child Molestation In The Second Degree RCW
10 9A..44.086; Count III - Kidnapping In The First Degree RCW 9A..08.020(3) / RCW
11 9A.40.020(1)(B).

12 The defendant filed a motion to suppress on the 13th of January 2009, in relation
13 to evidence collected pursuant to a search warrant executed on the 25th of September
14 2009. The warrant in this matter was authored by Det. Cindy Bull CCSO/CJC. The
15 warrant was signed by District Court Judge Richard Melnick.

16 **B. Facts**

17
18 As this is appears to be a challenge to the "four corners" of the warrant, the intent
19 on the part of the state is to incorporate all the facts included within the search warrant
20 be incorporated by reference in this matter.

21
22 The following facts, which are included within the body of the warrant, are pertinent
23 to the Defendant's challenge in this matter. The defendant's was contacted at his
24 residence on the 6th of August 2008 by Portland Police Bureau (P.P.B.) Officer Blank in
25 relation to a complaint that L.L.M., a 13 year old juvenile male, had been transport from
26 Portland, Oregon, to Vancouver, Washington in the early hours of the 6th of August
27

1 2008. At that time L.L.M. indicated that a male, known to L.L.M. as "Dalton" and a
2 adult female had been involved in the transport to an apartment in Vancouver, WA.
3 Further, L.L.M. indicated that male had provided alcohol to him while he was at the
4 apartment in Vancouver. L.L.M. was able to give a detailed description of the layout of
5 Dalton's apartment. At that time, P.P.B. Officer Blank was also contacted by L.L.M's
6 mother, who further indicated that she had not given anyone fitting the suspects
7 description permission to transport her son anywhere.

8 P.P.B. Officer Blank acting in response to the description of the Male suspect asked
9 L.L.M. to to guide him to the residence in Vancouver, Wa. L.L.M. was able to guide
10 P.P.B. Officer Blank to 5701 NE 102nd Avenue apartment #M73, Vancouver, WA. At
11 that location L.L.M. pointed out a gold Nissan, which L.L.M. indicated had been used to
12 transport L.L.M to 5701 NE 102nd Avenue apartment #M73, Vancouver, WA .

13 Upon arriving at the 5701 NE 102nd Avenue apartment #M73, Vancouver, WA,
14 P.P.B. Officer Blank made contact with an adult male, who fit the description of the
15 suspect given by the L.L.M. P.P.B. Officer Blank obtained the male's identity and was
16 invited into the Male's residence. P.P.B. Officer Blank kept the defendant in visual
17 contact through out the contact inside the residence. P.P.B. Officer Blank asked the
18 male if he was "Dalton" in relation to the information above relating to the transport of
19 L.L.M. The male indicated that he was not "Dalton." Officer Blank then was able to
20 identify the suspect as was able to contact the defendant as Steven Monroe Dillon from
21 a Washington State identification card. Officer Blank did make observations of the
22 area's in which he was located throughout the contact with the defendant.

23 From the 6th of August 2008 until the 25th of September 2008, L.L.M. had not
24 disclosed any further information about new information that had occurred at 5701 NE
25 102nd Avenue apartment #M73. On the 25th of September 2008, Detective Waddell
26 (P.P.B.) had an interview of the L.L.M. in which he indicated that while he was at 5701
27

1 NE 102nd Avenue apartment #M73 on the 6th August of 2008, the male known to him as
2 "Dalton" had L.L.M. put his mouth on "Dalton's" penis. Further, Dalton" had his mouth
3 on L.L.M. penis. There victim again diagramed the apartment located at 5701 NE
4 102nd Avenue apartment #M73 . An application for a warrant on the 25th of September
5 2008.

6
7
8 **C. Issue Presented**

- 9 1) Was there a sufficient factual basis, when excluding all of the observations by
10 Portland Police Bureau Officer Blanck on the 6th August 2008 of the interior of
11 Steven M. Dillon's apartment, presented to Clark County District Court Judge
12 Richard A. Melnick to support a finding that there was probable cause to search
13 5701 NE 102nd Avenue for possible evidence of the crimes under investigation?
14 2) Violation of Article I Section 7 specifically:
15 a) Where there any violations of Article I Section 7, of the Washington State
16 Constitution, committed in relation to entry the entry of Steven M. Dillon's
17 apartment by Portland Police Bureau Officer Blanck on the 6th August 2008?
18 b) Is suppression a remedy available to the defendant in the event that the court
19 finds that there was a violation of Article I Section 7, in relation to the entry the
20 entry of Steven M. Dillon's apartment by Portland Police Bureau Officer Blanck
21 on the 6th August 2008?

22
23 **D. The Search Warrant executed in this matter was valid.**

24
25 **1. STANDARD OF REVIEW**

26 The standard of review for issuance of a search warrant is an abuse of discretion
27

1 standard. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995), *State v. Bauer*, 98
2 Wn. App. 870, 991 P.2d 668 (2000). Great deference should be given to the probable
3 cause determination of the issuing magistrate. *State v. Young*, 123 Wn.2d 173, 195,
4 867 P.2d 593 (1994). Warrants are to be judged in a commonsense, practical manner,
5 rather than hyper-technically. *State v. Perrone*, 119 Wn.2d 538, 549, 834 P.2d 611
6 (1992). Generally, applications for search warrants "must be judged in the light of
7 common sense, **with doubts resolved in favor of the warrant.**" *Id.* (emphasis added).
8 Affidavits of probable cause need not meet the standards governing the admissibility of
9 evidence at trial. *State v. Withers*, 8 Wn. App. 123, 125, 504 P.2d 1151 (1972).

10 Generally, an affidavit establishes probable cause to support a search warrant if
11 the affidavit sets forth facts sufficient to allow a reasonable person to conclude both that
12 the defendant is involved in criminal activity and that evidence of the crime can be found
13 at the place to be searched. *State v. Maxwell*, 114 Wash. 2d 761, 769, 791 P.2d 223,
14 227 (1990). [See also *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999.) The
15 affidavit must contain facts and circumstances that are sufficient to establish a
16 reasonable inference that the defendant is probably involved in criminal activity and that
17 evidence of the crime can be found at the place to be searched.]

18 The independent source exception to the exclusionary rule under the Fourth
19 Amendment to United States constitution has long been accepted in the State of
20 Washington. *State v. Warner*, 125 Wn.2d 876, 888-89, 889 P.2d 479 (1995); *Murray v.*
21 *United States*, 487 U.S. 533, 537, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988)

22 Further, the independent source exception to the exclusionary complies with
23 article I, section 7 of the Washington Constitution. *State v. Gaines*, 154 Wn2d 711, 722,
24 116 P.3d 991, 998 (2005).

25 Pursuant to the application of the independent source exception, evidence
26 tainted by unlawful governmental action is not subject to suppression under the
27

1 exclusionary rule, provided that it ultimately is obtained pursuant to a valid warrant or
2 other lawful means independent of the unlawful action.

3 A close look at the facts and the application of the independent source exception
4 in *State v. Gaines*, is insightful and controlling with respect to the application in the
5 instant case.

6
7
8 In King County Washington on the 30th of April 2002, Jerry Hanson, reported to
9 Law Enforcement that he had been held for two days in a robbery extortion sceme by
10 Norman, Leandre, and Devennice Gaines. *State v. Gaines*, 154 Wn2d 711, 713, 116
11 P.3d 991, (2005). This scheme involved the use of a hand gun, being transported
12 around to financial institutions in Norman's car, the beating of Mr. Hanson with a steel
13 rod at Ms. Arletta Gaines home, and threats to kill Mr. Hanson relating to the use of a
14 firearm. *Id.* Mr. Hanson indicated that some of the assaultive conduct occurred at the
15 home of Arletta Gaines, and some of it on the road. Arletta Gaines was the mother of
16 Devannice and the aunt of Norman and Leandre. *Id.*

17
18 One of the officers who had taken the report came into contact with Norman Gaines
19 on the 1st of May 2002. *Id.* at 714. The officer arrested Norman in his vehicle and
20 conducted a search incident to the arrest. The officer then searched the locked trunk of
21 Norman's vehicle and saw what appeared to be the barrel of an assault rifle. *Id.* The
22 officer did not disturb or touch the contents of the trunk. *Id.* The car was later placed in
23 an impound facility. On the 2nd of May 2002, a different law enforcement officer, a
24 Seattle Detective, applied for a search warrant for Arletta's house, Norman's car, and
25 the person of Leandre Gaines. *Id.* The four-page affidavit in support of the warrant
26 contained Mr. Hanson's statements set out above regarding the location of the incidents
27 and the implements used to facilitate the assault. The warrant application included a

1 single statement that the "Officer did observe the barrel of what he believed to be a
2 rifle [in the trunk]." *Id.* The search of the trunk resulted in the seizure of the assault rifle
3 the possession of which Norman Gaines was charge and convicted of unlawfully
4 possessing. The Arletta Gaines home was search and evidence was also seized. *Id.*
5 This evidence was used in the trial of Norman and Devannice Gains. Norman Gaines
6 was convicted of Attempted Robbery in the first Degree with a Firearm Enhancement.
7 His cousin Devannice was also convicted of first degree attempted robbery with a
8 firearm enhancement and second degree assault with a deadly weapon
9 enhancement. *Id.*

10 The *Gaines* court found that the warrant was valid as that sufficient probable cause
11 existed in the warrant when reading out or excluding the following language: that the
12 "Officer did observe the barrel of what he believed to be a rifle [in the trunk]." *Id* at 722.
13 The court found that without this language the remaining information relayed by Mr.
14 Hanson relating was sufficient to satisfy probable cause for a search warrant.

15 In the instant case, on the 6th of August 2008, Portland Police Bureau (P.P.B.) officer
16 Blanck was given information that a thirteen year old male, L.L.M. (D.6/26/1995) was
17 picked up in Portland by a white adult male know as "Dalton." That "Dalton" transported
18 L.L.M. to Vancouver and took L.L.M. inside of an apartment. That "Dalton's" apartment
19 was located in Vancouver Washington. The thirteen year old L.L.M. directed P.P.B.
20 Officer Blank to 5701 NE 102nd Avenue apartment #M73, Vancouver Washington.
21 L.L.M. pointed out a gold colored Nissan parked in the covered parking area near the
22 apartment. The plate on the car was run and came back as registered to a Glenda
23 Dillon. (This is the

24
25 L.L.M indicated to P.P.B. Officer Blank that "Dalton." supplied L.L.M with alcoholic
26 beverages. L.L.M. indicated that "Dalton" had a female or a girlfriend with him in the
27

1 apartment. L.L.M. indicated that as he had been in "Dalton's" apartment described
2 "Dalton's" apartment including the living room, dining room, kitchen, and the location of
3 assorted stuffed animals. Finally, L.L.M's mother indicated that none of the above
4 transportation or other activities were done with her permission.

5 A physical description of "Dalton." was given to P.P.B. Officer Blank by L.L.M.
6 "Dalton." was described as being a male 5'7" with tattoo's on his neck and arms. L.L.M
7 indicated that the man had a tattoo of a skull. That the man had short hair.

8 P.P.B. Officer Blank contacted the occupants of 5701 NE 102nd Avenue apartment
9 #M73. A male in his 50's answered the door. The male had his hair pulled back in a
10 pony tail. The male had multiple tattoo's on his chest, arms, and shoulder which were
11 observed by P.P.B. Officer Blank. One of the tattoo's observed by Officer Blank was a
12 skull on the man's shoulder. The man was asked if he was "Dalton." The man said
13 "No." The man invited P.P.B. Officer Blank into his apartment. At that point the man
14 was asked for identification and was identified as Steven Dillon. The man had to go into
15 his bedroom to retrieve the identification. Officer Blank followed the man for reasons of
16 officer safety. There was also a female present who was identified as Lori Spangler.

17 While in the apartment P.P.B. Officer Blank was able to note a variety of similarities
18 to the descriptions given to him by L.L.M in relation to the interior of the apartment. The
19 contact ended at this point. Officer Blank seized no items. He moved nothing while he
20 was present in the apartment.

21 On the 25th of August 2008, L.L.M's mother contacted P.P.B. and disclosed that
22 L.L.M. had written her a letter. L.L.M. specified that sexual contact, specifically oral to
23 genital contact by L.L.M. upon "Dalton" and by Dalton upon L.L.M. which occurred
24 within the 5701 NE 102nd Avenue apartment #M73, in Vancouver Washington.
25
26
27

1 L.L.M was interviewed by P.P.B. Detective Waddell. L.L.M. rendered a more
2 detailed account of sexual activity that occurred within the apartment. Further, L.L.M.
3 indicate that he was picked up by "Dalton" and transported to and from 5701 NE 102nd
4 Avenue apartment #M73, Vancouver Washington in a Gold four door Nissan. L.L.M.
5 indicated that he had watched a movie entitle "*When a Stragner Calls*", while he was in
6 "Dalton's" apartment 5701 NE 102nd Avenue apartment #M73, in Vancouver
7 Washington. L.L.M. gave a detailed description of the inside of 5701 NE 102nd
8 Avenue apartment #M73, Vancouver Washington to P.P..B. Detective Waddell,
9 including a diagram of the apartment. The diagram included details as to where the
10 sexual conduct occurred. The facts were all included in the application to District Court
11 Judge Richard Melnick.

12 Now, the facts of the instant case are indistinguishable from those set out above
13 from the *Gaines* decision. Clearly, the holding in *Gaines* is controlling when looking at
14 the following facts. In the event that the facts of the observations of Officer Blank were
15 to be taken out of consideration, it is clear that the application for the search warrant in
16 the instant case contained sufficient probable cause to order to support a reasonable
17 detached magistrate to authorize the search of 5701 NE 102nd Avenue apartment #M73,
18 in Vancouver Washington.

19 Such a magistrate or Judge would have the observations of a thirteen year old
20 boy, L.L.M, as to the criminal conduct that occurred within 5701 NE 102nd Avenue
21 apartment #M73, in Vancouver Washington. In addition, the observations of Officer
22 Blank as to the description of the male occupant, who was located at 5701 NE 102nd
23 Avenue apartment #M73, in Vancouver Washington, The fact that this individual fit the
24 description of "Dalton" given by L.L.M. The fact that the car used to transport the L.L.M.
25 from Oregon into Washington, was identified by L.L. M. as being outside of the 5701 NE
26
27

1 102nd Avenue apartment #M73, in Vancouver Washington on the same day as the male
2 was contacted by Officer Blank.

3 In the instant case all of these facts would be sufficient to satisfy probable cause
4 for a search warrant of 5701 NE 102nd Avenue apartment #M73, in Vancouver
5 Washington, as issued upon the 25th of September 2008, by Judge Richard A. Melnick.
6 Therefore, the State requests that the court find that the warrant was valid as
7 authorized.

8 As to the application of *State v. Ferrier*, 136 Wn.2d 103; 960 P.2d 927;(1998), to
9 the instant case, the state does not concede that the defendant's analysis or application
10 contains merit.

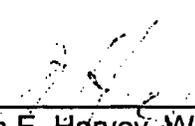
11 Specifically, the state believes that as no search occurred of the defendant's
12 residence on the 6th of August 2008, that the defendant's application of *Ferrier* to
13 the facts of the instant case are inapplicable.
14

15
16 **E. CONCLUSION**

17 Based on the foregoing, the State respectfully requests that the defendant's
18 motion be denied.

19 RESPECTFULLY SUBMITTED this March 16, 2009.

20
21 ARTHUR D. CURTIS
22 Prosecuting Attorney

23
24 
25 Alan E. Harvey, WSBA #25785
26 Deputy Prosecuting Attorney

27 Page

10

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON
Plaintiff,

Vs.

Steven Monroe Dillon, DOB 12/15/1952
Lori Elizabeth Spangler, DOB 12/31/1959
Defendant,

STATE OF WASHINGTON)
COUNTY OF CLARK)ss

AFFIDAVIT FOR SEARCH WARRANT

I, Cindy L. Bull, being first duly sworn upon oath, hereby deposes and say, that I have good and sufficient reason to believe that the following described goods to wit:

1)A DVD movie identified as "When a Stranger calls", 2) Any adult pornography DVD's that appear to have been professionally produced, 3) Stuffed animals to include teddy bears and bunnies, 4)A portable DVD player red and yellow in color with the children's cartoon character Dora the Explorer on it, 5) A red neon light to be found on the headboard of the bed in the bedroom, 6) A prescription medication described as "red pills" possibly for erectile dysfunction, 7) Any cellular phones and related cellular phone bills, 8) A red and tan bedspread with flowers, 9) Any trace evidence that may have been left behind from the body of the victim to include, but not limited to; hairs, blood, semen, saliva and/or other forms of DNA, 10) To photograph the interior of the apartment to document the layout and furniture described by the victim, to include two black cloth couches in an "L" shape along two walls of the front room, a brown square shaped bookshelf with a TV and electronic equipment to include a disc player, record player/receiver with black knobs just to the left of the front door, a hallway to the right of the front door that leads to the bathroom with bedroom on the left of the hallway and a closet on the right. The bedroom has a sliding door closet to the right of the door and a large bed with a mirror bookshelf headboard directly in front of you as you walk in, a "hospital type" stand with a approximately 27" picture tube type TV, 11) Any papers or documents and effects which tend to show possession, dominion, and control over said premises and vehicle, including but not limited to keys, cancelled mail envelopes, rental agreements and receipts, utility and phone bills, photographs and film, prescription bottles, vehicle

EXHIBIT A

registration, insurance papers, address and telephone books, governmental notices, and documents or clothing of any kind or objects which a person's name, phone number, or address may be listed, and any other items of evidence relating to the crimes of rape of a child, child molest, and kidnapping,

Are evidence to wit of the crime of Rape of a Child II, RCW 9A.44.076, and Child Molest II, RCW 9A.44.086, and Kidnap I, RCW 9A.40.020, are on this 25th day of September, 2008, in the possession of the defendants in an:

Apartment dwelling, cream in color with vinyl siding, known as Orchard Glen Apartments, bearing the specific address of 5701 NE 102nd Avenue, the building is marked with an "M", with the specific apartment marked with #73, with a green front door with a sticker displaying an American flag and the words "God Bless America," located in Vancouver, Clark County, Washington, and curtilage,

And a vehicle:

A gold four door 2002 Nissan Sentra, bearing the specific Washington license 69544DP, VIN 3N1CB51D62L580997, registered to Glenda Dillon, known to park in the parking area near the listed location, 5701 NE 102nd Avenue, #M73, Vancouver, Clark County, Washington,

And I am aware of the same based upon the following:

I am a Deputy Sheriff with the Clark County Sheriff's Office, and have been so employed for the past nineteen years. I am currently assigned as a Detective at the Children's Justice Center. I have investigated allegations of physical and sexual abuse on children under the age of eighteen years for approximately eight years.

In this official capacity, I was assigned to follow up on an investigation that originated with Portland Police Bureau. According to the report taken by PPB Officer Blanck on 8/6/2008, the alleged victim, L.M.M. (DOB 06/26/1995), was befriended by an adult male, later identified as Dillon, Steven Monroe, DOB 121552, not known by the family and coerced across state lines to his apartment in Vancouver, Washington.

Officer Blanck reports the victims' mother, Vanessa Manning (DOB 10/11/1964) told him that her 13 year old son L.M.M. had met a man while at the Midland Library in Portland Oregon. The man who L.M.M. knew as "Dalton" befriended her son. Without her permission or knowledge, he gave her son his phone number (360) 980-3536.

In the early morning hours of August 6, 2008, her son called "Dalton" and the two talked over the phone for a length of time. At approximately 3:00AM, "Dalton" then drove from his apartment in Vancouver, Washington, to Portland, Oregon, met L.M.M. across the street at a gas station and transported him back across state lines to Vancouver, Washington.

Officer Blanck interviewed L.M.M. L.M.M. was able to describe "Dalton" as a man about 5'7" with tattoos on his arms and neck. He recalled one tattoo to be that of a skull. He thought he had short hair and was unsure of his age. When asked, L.M.M said he would be able to direct Officer Blanck to "Dalton's" apartment. L.M.M directed the officer to the Orchard Glen apartment complex located at 5701 NE 102nd Ave, Vancouver, Clark County, Washington. He pointed out apartment # M73 along with a gold colored Nissan parked in the covered parking area near the apartment. The vehicle had the license plate, WA/ 69544DP, which is registered to Glenda Dillon.

When asked, L.M.M described the interior of the apartment to Officer Blanck as having couches in the living room right when you walk in the front door with a dining area and kitchen area that were "open" to the living room. The bedroom had a shelf unit that had stuffed animals and a big mirror. He remembered the stuffed animals to be "bunnies". L.M.M. described the TV as being on a brown stand with a black TV on it and stuff on top of the TV.

L.M.M. added that "Dalton" had offered him Smirnoff Ice to drink but he had refused it. L.M.M stated that he watched movies with "Dalton", specifically "When a stranger calls" and "Hit Man" and a "lifetime type movie" his mom would watch which he did not understand.

L.M.M. was asked if he ever felt uncomfortable while at "Dalton's" house. L.M.M said he had when "Dalton" had grabbed his leg while they were watching the movies. L.M.M said he got up and sat on the opposite couch, told him to take him home. He said "Dalton" and his girlfriend, who had arrived after they had been watching movies, drove him back to Portland, Oregon. He said "Dalton" dropped him off at a car wash across the street from his house.

Officer Blanck made contact with the occupants of 5701 NE 102nd Ave, Apt #M73, Vancouver, Washington, on the same day. A white male in his 50's answered the door. He had his hair pulled back in a ponytail. He had multiple tattoos on his chest, arms, and shoulders, to include a skull on his shoulder. Officer Blanck asked him if he was "Dalton". He said, "No". The man invited them into the apartment where he was asked for identification. The man went into the bedroom to retrieve his identification, followed by Officer Blanck for safety reasons. The man presented a Washington Identification Card# DILLOSM483RN, Steven Monroe Dillon, DOB 12/15/1952. A female was present for this contact. She was identified as Lori Spangler (DOB 12/31/1959)

When questioned by Officer Blanck, Dillon denied traveling to Portland to pick anyone up or having any early morning visitors. Officer Blanck reports he was amazed by the accuracy of L.M.M.'s account of the interior of the apartment. He noted the dining/kitchen area was an "open" style. The living room contained two couches and a brown TV stand with a large black TV on top of it. In the bedroom was a large bedroom ensemble/wall unit complete with a large mirror. The room had several stuffed animals in various cubicles and on the bed. Officer Blanck left the apartment and contacted Portland Police Bureau Detectives for follow up investigation.

Detective Cheryl Waddell was assigned the case. On 9/24/08, I spoke with Detective Waddell who told me the following: Detective Waddell contacted CARES NW (Child Abuse Referral and Examination part of Legacy Emanuel Hospital) for an interview and examination for L.M.M. On August 22, 2008, Detective Waddell attended the CARES interview. L.M.M. did not disclose specific sexual abuse during his interview and there were no obvious signs of trauma or sexual abuse discovered during his medical exam.

L.M.M added details to his encounter with Dillon during his interview. L.M.M added that Dillon had called his girlfriend and told her to come over shortly after they had arrived at the apartment. L.M.M also added that Dillon had grabbed his leg just above the knee while watching "When a Stranger Calls" but they were interrupted by the girlfriend walking in.

Detective Waddell talked with L.M.M. after his CARES interview and explained to him that he was not in trouble, that she was investigating "Dalton". Detective Waddell asked L.M.M if he had gotten in trouble with his mother for leaving the house in the middle of the night. L.M.M. said he had been punished with no "Myspace", no video games and no TV for two weeks. Detective Waddell explained to L.M.M. that no matter what he told her even if he remembered things later to tell his mother and he still would not be in trouble.

On August 25, 2008, Detective Waddell was contacted by L.M.M's mother, Vanessa Manning. Vanessa Manning told Detective Waddell her son had come to her on Saturday, August 23, 2008, saying he wanted to tell her something but would rather write it out instead of saying it verbally. Vanessa Manning encouraged her son to go ahead and write out what he wanted to tell her. L.M.M. wrote two statements detailing how "Dalton" and his girlfriend sexually assaulted him.

L.M.M wrote ... "he to me to his house and offered me Smirnoff and I said no, so he put on some porn and then he made me suck his privates, then he sucked mine, then he called his girlfriend and then he started humping me then his girlfriend came in and she touched on privates then I said u gots take me home they got some gas and took me home" The second letter was a little more detailed "... pulled his thing out then got on top of me and unzipped my zipper

tried to hump me then his girlfriend knock on the door so he got up and put his private away.....he called his girlfriend and went to unlock the door for her then he came back in the room and was talking about having a 3 some with and I said no then started humping me then he stopped and got his girlfriend and she came in and touched my thing then I said I have to go home now take me home..." L.M.M signed both letters and dated the second one.

On September 5, 2008, Detective Waddell re-interviewed L.M.M with Officer Blanck at his home per his and his mother's request. L.M.M gave the same statement he had given to Officer Blanck only this time adding some details including the sexual assault. L.M.M said he called "Dalton" around 1230 to midnight on August 6, 2008. He said they talked for about thirty minutes. "Dalton" told him he should come over to his apartment but L.M.M kept telling him he could not. "Dalton" said he would come pick him up. "Dalton" arrived at about 1:15 am in a gold four door Nissan. He said he took him straight to his apartment. They went inside and he offered L.M.M. a drink of Smirnoff from a "big bottle." "Dalton" had a glass full of Smirnoff. They watched the movie "When a Stranger Calls" and a porn movie with men and women. L.M.M. said it did not look "homemade" it looked professional. While they were watching these movies in "Dalton's" room, he was rubbing his penis against him as he was lying on top of him. L.M.M. still had his clothes on.

"Dalton" forced L.M.M to suck his penis by placing his hand on the back of his head and pushing it down toward his penis that was sticking out of his unzipped pants. "Dalton" sucked L.M.M.'s penis, he did not take his clothes off rather just unzipped L.M.M.'s pants and pulled out his penis through his zipper. Then the girlfriend came in and "Dalton" told her to touch L.M.M.'s penis and she did. L.M.M. told them he wanted to go home and they asked him to stay longer because they wanted to do a three-some. L.M.M. told them his mom was coming home and he needed to go home. L.M.M added that "Dalton" told his girlfriend that he was going to have to get some red pills in case his penis would not go. When asked if there was anything noticeably different about "Dalton's" private parts, L.M.M. said that "no, except that he is circumcised". L.M.M noticed this because he is not circumcised.

L.M.M added the details of "Dalton's" room having a red neon light on the headboard of his bed, along with the bedspread with red and tan flowers, which he described as an "old lady" bed.

Detective Waddell asked L.M.M to diagram the apartment and he provided two drawings one of the front room and the other of the bedroom. L.M.M drew himself and "Dalton" in their respective positions on the bed during the sexual assault and when they were watching the movies.

On September 12, 2008, Detective Waddell presented L.M.M with two photo layoffs. One with a photo of Steven Monroe Dillon and five other subjects and

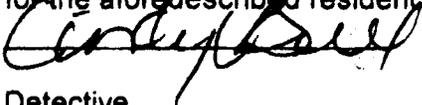
the other with Lori Spangler (Steven's girlfriend) and five other subjects. L.M.M was not able to identify Dillon in the photo laydown (note the only available photo of Dillon was at least 4 years old) L.M.M kept saying "Dalton" had more gray hair. L.M.M did positively identify Lori Spangler as "Dalton's" girlfriend that had sexually assaulted him. Detective Waddell had him initial the front of the photo of Spangler then sign, and date the back. Detective Waddell signed as a witness.

Additionally, Detective Waddell told me that she had also gotten phone toll records between the Dillon's cellular phone (360-980-3536) and the victim's home phone number, (503-762-3191). She said the records showed phone contact between for the two phone numbers for an extended period of time corroborating the statements made by L.M.M. She said L.M.M. also disclosed that "Dalton" gave him the phone number to another subject known as "Johnathan" and suggested he call him. She said she checked on Johnathan further through his toll records and found that Johnathan Hurst resides at the residence listed for Lori Spangler's SSI records.

Detective Waddell said she researched Lori's past records with the Children's Services Division in Oregon. She said in 1989 Lori's son disclosed during a sexually aggressive youth treatment session that his mother had been having three-way sex with him and her then-boyfriend.

On 9/24/08, I drove by the listed suspect/s address, 5701 NE 102nd Avenue, #M73, Vancouver, Washington. The name of the apartment complex is Orchard Glen. The name is posted on a sign at the entrance to the apartment complex. The apartments are cream colored with vinyl siding. Each building is individually marked with an alphabet letter. I observed the listed suspect vehicle, a gold colored four door 2002 Nissan Sentra (WA 69544DP) parked in a covered parking area in front of building #M. The lower level apartment was #M73. The front door of the apartment is green in color and is marked with the specific apartment number. The door also has a sticker on it displaying an American flag with the words "God Bless America."

Based upon the foregoing, I pray the court for the issuance of a search warrant for the aforescribed residence and vehicle and curtilage.



Detective
Clark County Sheriff's Office/ Children's Justice Center

Subscribed and sworn to me this 25 day of September 2008.



District Court Judge
Clark County
State of Washington

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON
Plaintiff,

Vs.

Steven Monroe Dillon, DOB 12/15/1952
Lori Elizabeth Spangler, DOB 12/31/1959
Defendant,

STATE OF WASHINGTON)
COUNTY OF CLARK)ss

SEARCH WARRANT

THE PEOPLE OF THE STATE OF WASHINGTON, to any Sheriff, Police Officer, or Peace Officer in the County of Clark; Proof by written affidavit under oath, made in conformity with the State of Washington Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section ©, having been made this day to me by Cindy L. Bull, a Detective with the Clark County Sheriff's Office, that there is probable cause for the issuance of a Search Warrant on grounds set forth in the State of Washington Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section ©.

YOU ARE THEREFORE COMMANDED, that with the necessary and proper assistance to make a diligent search, good cause having been shown therefore, of the following described residence and vehicle; within ten (10) days of the issuance of this warrant:

An apartment dwelling, cream in color with vinyl siding, known as Orchard Glen Apartments, bearing the specific address of 5701 NE 102nd Avenue, the building is marked with an "M", with the specific apartment marked with #73, with a green front door with a sticker displaying an American flag and the words "God Bless America," located in Vancouver, Clark County, Washington, and curtilage,

And a vehicle:

A gold four door 2002 Nissan Sentra, bearing the specific Washington license 69544DP, VIN 3N1CB51D62L580997, registered to Glenda Dillon, known to park in the parking area near the listed location, 5701 NE 102nd Avenue, #M73, Vancouver, Clark County, Washington,

For the described goods:

1) A DVD movie identified as "When a Stranger calls", 2) Any adult pornography DVD's that appear to have been professionally produced, 3) Stuffed animals to include teddy bears and bunnies, 4) A portable DVD player red and yellow in color with the children's cartoon character Dora the Explorer on it, 5) A red neon light to be found on the headboard of the bed in the bedroom, 6) A prescription medication described as "red pills" possibly for erectile dysfunction, 7) Any cellular phones and related cellular phone bills, 8) A red and tan bedspread with flowers, 9) Any trace evidence that may have been left behind from the body of the victim to include, but not limited to; hairs, blood, semen, saliva and/or other forms of DNA, 10) To photograph the interior of the apartment to document the layout and furniture described by the victim, to include two black cloth couches in an "L" shape along two walls of the front room, a brown square shaped bookshelf with a TV and electronic equipment to include a disc player, record player/receiver with black knobs just to the left of the front door, a hallway to the right of the front door that leads to the bathroom with bedroom on the left of the hallway and a closet on the right. The bedroom has a sliding door closet to the right of the door and a large bed with a mirror bookshelf headboard directly in front of you as you walk in, a "hospital type" stand with a approximately 27" picture tube type TV, 11) Any papers or documents and effects which tend to show possession, dominion, and control over said premises and vehicle, including but not limited to keys, cancelled mail envelopes, rental agreements and receipts, utility and phone bills, photographs and film, prescription bottles, vehicle registration, insurance papers, address and telephone books, governmental notices, and documents or clothing of any kind or objects which a person's name, phone number, or address may be listed, and any other items of evidence relating to the crimes of rape of a child, child molest, and kidnapping,

And if you find same or any part thereof, then items of identification pertaining to the residency of the above described vehicle and residence, bring same before the Honorable District Court Judge Rich Melnick to be disposed of according to law.

Given under my hand this 25 day of September, 2008.

This Search Warrant was issued by: Rich Melnick

District Court Judge

Clark County

State of Washington

Time: 09:05
about

Date/Time Executed: 09:20
0705

IN THE DISTRICT COURT OF CLARK COUNTY
STATE OF WASHINGTON

STATE OF WASHINGTON
Plaintiff,

Vs.

Steven Monroe Dillon, DOB 12/15/1952
Lori Elizabeth Spangler, DOB 12/31/1959
Defendant,

STATE OF WASHINGTON)
COUNTY OF CLARK)ss

SEARCH WARRANT STATEMENT

On September, 26th, 2008, at 0705 hours, I, Cindy L. Bull, executed a search warrant signed by the Honorable Judge Melnick on September 25th, 2008, which directed that an:

Apartment dwelling, cream in color with vinyl siding, known as Orchard Glen Apartments, bearing the specific address of 5701 NE 102nd Avenue, the building is marked with an "M", with the specific apartment marked with #73, with a green front door with a sticker displaying an American flag and the words "God Bless America," located in Vancouver, Clark County, Washington, and curtilage,

And a vehicle:

A gold four door 2002 Nissan Sentra, bearing the specific Washington license 69544DP, VIN 3N1CB51D62L580997, registered to Glenda Dillon, known to park in the parking area near the listed location, 5701 NE 102nd Avenue, #M73, Vancouver, Clark County, Washington,

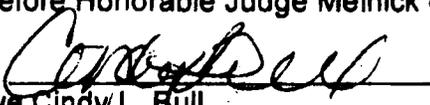
Be searched and the following seized:

1)A DVD movie identified as "When a Stranger calls", 2) Any adult pornography DVD's that appear to have been professionally produced, 3) Stuffed animals to include teddy bears and bunnies, 4)A portable DVD player red and yellow in color with the children's cartoon character Dora the Explorer on it, 5) A red neon light to be found on the headboard of the bed in the bedroom, 6) A prescription medication described as "red pills" possibly for erectile dysfunction, 7) Any cellular phones and related cellular phone bills, 8) A red and tan bedspread with flowers, 9) Any trace

evidence that may have been left behind from the body of the victim to include, but not limited to; hairs, blood, semen, saliva and/or other forms of DNA, 10) To photograph the interior of the apartment to document the layout and furniture described by the victim, to include two black cloth couches in an "L" shape along two walls of the front room, a brown square shaped bookshelf with a TV and electronic equipment to include a disc player, record player/receiver with black knobs just to the left of the front door, a hallway to the right of the front door that leads to the bathroom with bedroom on the left of the hallway and a closet on the right. The bedroom has a sliding door closet to the right of the door and a large bed with a mirror bookshelf headboard directly in front of you as you walk in, a "hospital type" stand with a approximately 27" picture tube type TV, 11) Any papers or documents and effects which tend to show possession, dominion, and control over said premises and vehicle, including but not limited to keys, cancelled mail envelopes, rental agreements and receipts, utility and phone bills, photographs and film, prescription bottles, vehicle registration, insurance papers, address and telephone books, governmental notices, and documents or clothing of any kind or objects which a person's name, phone number, or address may be listed, and any other items of evidence relating to the crimes of rape of a child, child molest, and kidnapping,

And if you the same or any part thereof.....

In executing said warrant, I seized the things listed on the attached property reports from the premises and vehicle described above and have returned the same before Honorable Judge Melnick on September 30th, 2008.

Signed: 
Detective Cindy L. Bull
Clark County Sheriff's Office
Children's Justice Center

Clark County Sheriff's Office
 707 W 13th Street, Vancouver, WA 98660
 (360) 397-2211

Property / Evidence Form

Page 1 of 2
 Case Number: 508-14149
 Lab Service Needed:

Date: 9/26/08 Time: 08 40
 Reporting Officer: A. HOLLADAY

PSN # 1239 Precinct CTC

REFCASE#
 KEY CASE#
 RCW:

Evidence Type: Incident Type: CHILD MOLEST
 Location: 5701 NE 102 AVE. M73, VANCOUVER, WA.

Relationship Codes: V = Victim O = Owner F = Finder S = Suspect C = Claimant P = Unknown

Property Codes: E = Evidence K = Safekeeping F = Found R = Release D = Destroy B = Bio Hazard

Relationship to Property Name (Last, First Middle or Organization)
 S-1 DILLON, STEVEN MONROE

Residence Address (inc. City & State)
 5701 NE 102nd Ave. # M73

Res. Phone Sex Date of Birth Additional Information
 980-3536 M 12-15-52 TATTOOS - NUMEROUS

Relationship to Property Name (Last, First Middle or Organization)

Residence Address (inc. City & State)

Res. Phone Sex Date of Birth Additional Information

Evidence Information Section

| Item # | Property Code | Person Code | Item Description | Color | Place Barcode label HERE |
|---|------------------|-------------|---------------------------|--------|--------------------------|
| 1 | E | S | RED LIGHT BULB | RED | |
| Quantity | Units of Measure | Comments | Estimated Value of Item | Action | |
| 1 | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | |
| 2 | E | S | TEDDY BEARS 3 | BRO | Place Barcode label HERE |
| Quantity | Units of Measure | Comments | Estimated Value of Item | Action | |
| 3 | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | |
| 3 | E | S | PURPLE TEDDY BEARS | | Place Barcode label HERE |
| Quantity | Units of Measure | Comments | Estimated Value of Item | Action | |
| 1 | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | |
| 4 | E | S | BAG OF CELL PHONES - MISC | | Place Barcode label HERE |
| Quantity | Units of Measure | Comments | Estimated Value of Item | Action | |
| 13 | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | |

Distribution: <>Patrol <>CR <>SR <>Resid <>CAIC <>CMT
 <>PA <>DCPA <>JPA <>DC <>CPS <>DSHS
 Officer Signature: AARON HOLLADAY
 Aaron M. Holladay

Clark County Sheriff, Vancouver Wa.

P.O. Box 410 / 707 W. 13th Street, Vancouver Wa. 98666 (360) 699-2211

Page 2 of 2
Case Number: 508-14149

| | | | | | | | |
|---|----------------------------|-------------------------|---|--------------------------|--------------------------|-----|--|
| Item # <u>5</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>BOITE OF PILLS</u> | Color <u>BRW</u> | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>1</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>6</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>CELL PHONE</u> | Color <u>BLK</u> | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>1</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>7</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>RECEIPT, INSURANCE CARD</u> | Color | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>3</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>8</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>NEWS PAPER BILLS FOR STEVE</u> | Color <u>WHI</u> | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>2</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>9</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>TWO BOXES W/ CELL PHONES</u> | Color | | | |
| Make / Brand <u>MOTOROLA</u> | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>10</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>FLOWERED BED SPREAD</u> | Color | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>1</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Item # <u>11</u> | Property Code <u>E</u> | Person Code <u>S</u> | Item Description <u>3 BOTTLES OF PILLS</u> | Color | | | |
| Make / Brand | Model | ID / Serial Number | Estimated Value of Item | Caliber | | | |
| Quantity <u>3</u> | Units of Measure | Comments | | | | | |
| Owner's Name, DOB, Address, Phone # (Fill in only if the owner / contact person of this item is different than the above) | | | | | | | |
| Distribution <u><PA</u> | <Patrol <u><DCPA</u> | <CIU <u><JPA</u> | <BIU <u><DC</u> | <Resid <u><CPS</u> | <CAIC <u><DSHS</u> | CMT | Officer Signature <u>AARON HOLLADAY</u> |
| Other | | | | | | | <u>Aaron M. Holladay</u> |

Place Barcode label HERE

any DNA
Place Barcode label HERE

Place Barcode label HERE

Original

3

FILED

APR 17 2009

Sherry W. Parker, Clerk, Clark Co.

11:53am

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

STATE OF WASHINGTON,

Plaintiff,

v.

STEVEN MONROE DILLON,

Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6;
HEARING.

No. 08-1-01650-1

THIS MATTER having come before the court on 16th of March 2009 and ~~16th~~ ^{24th} March 2009, the State of Washington represented by Deputy Prosecuting Attorney Alan E. Harvey and the Defendant, present and represented by Defense Attorney James J. Sowder and the Court having heard the testimony of Clark County Sheriff's Detective's Cindy Bull, Portland Police Bureau (P.P.B.) Officer Robert Blanck, and (P.P.B.) Det. Cheryl Waddell, as well as arguments of counsel. The Court makes the following:

FINDINGS OF FACT

1. That the defendant's residence was search pursuant to a warrant served upon him on 25th of September 2008.
2. That this warrant was served at his residence at 5701 NE 102nd Avenue apartment #M73.
3. That evidence was seized at that time and that photographs were taken at that time.
4. That the warrant was based upon evidence That on the 6th of August 2008 Portland Police Bureau (P.P.B.) Officer Blank in relation to a complaint that L.L.M.,

FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON 3.6 HEARING - 1

CLARK COUNTY PROSECUTING ATTORNEY
PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (TEL)

Handwritten initials/signature

1 a13 year old juvenile male, transported L.L.M. across the Oregon/Washington
2 border from Portland, Oregon, to Vancouver, Washington

3 5. That on the 6th of August 2008 that time L.L.M. indicated to Officer Blank that a
4 male, known to L.L.M. as "Dalton" and a adult female had been involved in the
5 transport to an apartment in Vancouver, WA.

6 6. Further, That L.L.M. indicated that male had provided alcohol to him while he was
7 at the apartment in Vancouver.

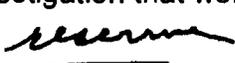
8 7. Further that L.L.M. was able to give a detailed description of the layout of Dalton's
9 apartment.

10 8. Further that At that time, P.P.B. Officer Blank was also contacted by L.L.M's mother,
11 who further indicated that she had not given anyone fitting the suspects description
12 permission to transport her son anywhere.

13 9. That P.P.B. Officer Blank acted in response to the description of the Male suspect
14 asked L.L.M. to to guide him to the residence in Vancouver, Wa. L.L.M. was able to
15 guide P.P.B. Officer Blank to 5701 NE 102nd Avenue apartment #M73, Vancouver,
16 WA.

17 10. That at that above location L.L.M. pointed out a gold Nissan, which L.L.M. indicated
18 had been used to. transport L.L.M to 5701 NE 102nd Avenue apartment #M73,
19 Vancouver, WA .

20 11. That upon arriving at the 5701 NE 102nd Avenue apartment #M73, Vancouver, WA,
21 P.P.B. Officer Blank made contact with an adult male, who fit the description of the
22 suspect given by the L.L.M.

23 12. That the court incorporates all of the facts that were developed by Det. Waddell
24 regarding disclosures including Cindy Bull's investigation that were contained in
25 the warrant. *DEFENDANT SUBJECTS* 

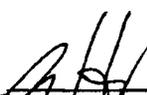
1
2
3 **CONCLUSIONS OF LAW**

- 4 1. The warrant, excluding all of the observations by Officer Blank, inside of the
5 defendant's apartment would be sufficient to sustain probable cause to issue a
6 search warrant.
7 2. The court is adopting the state's analysis as to the "Independent Source
8 Doctrine."
9 3. The court is not ruling on the issue of whether the entry into the defendant's
10 apartment was a entry violative of the "Knock and Talk" pursuant to *State v.*
11 *Ferrier*, 136 Wn.2d 103; 960 P.2d 927;(1998).
12 4. All evidence that was seized pursuant to the warrant executed on the 25th of
13 September 2008 is admissible in the State's case in chief.

14 DONE in Open Court this 17th day of April, 2009.

15
16 
17 HONORABLE Robert L. Harris
18 Judge of the Superior Court

19 Presented by:

20
21 
22 Alan E. Harvey, WSBA #25785
23 Deputy Prosecuting Attorney

24 
25 James J. Sowder, WSBA # 9072
26 Attorney for Defendant

27
28
29 Defendant

13

FILED

OCT 14 2009

1:35 pm
Sherry W. Parker, Clerk, Clark Co.



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

STATE OF WASHINGTON,

Plaintiff,

v.

STEVEN MONROE DILLON,

Defendant.

No. 08-1-01650-1

**COURT'S INSTRUCTIONS
TO THE JURY**



SUPERIOR COURT JUDGE

DATED this 14 day of October, 2009.

102
AS

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

The complaint in this case is only an accusation against the defendant which informs the defendant of the charge. You are not to consider the filing of the complaint or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

INSTRUCTION NO. 2

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. 3

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State of Washington is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

INSTRUCTION NO. 6

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 7

A person commits the crime of rape of a child in the second degree when the person has sexual intercourse with a child who is at least twelve years old but less than fourteen years old, who is not married to the person, and who is at least thirty-six months younger than the person.

INSTRUCTION NO. 8

To convict the defendant of the crime of rape of a child in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about August 6, 2008, the defendant had sexual intercourse with L.M.M.;

(2) That L.M.M. was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;

(3) That L.M.M. was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 9

Sexual intercourse means

That the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight or

Any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

INSTRUCTION NO. 10

Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

INSTRUCTION NO. 11

It is not a defense to the charge of Rape of a Child in the Second Degree if at the time of the act the defendant did not know the age of Leeanthony Manning or the defendant believed him to be older.

It is, however, defense to the charge of Rape of a Child in the Second Degree that at the time of the acts the defendant reasonably believed Leeanthony Manning was at least 14 years of age, based upon declaration said to the age by Leeanthony Manning.

The defendant has a burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means you must be persuaded, considering all the evidence of the case, that it is more probably true than not true. If you find the defendant has established this defense, it will be your duty to return a verdict of not guilty as to the charge of Rape of a Child in the Second Degree.

INSTRUCTION NO. 12

The age of consent for sexual intercourse is sixteen years old.

INSTRUCTION NO. 13

A person commits the crime of Kidnapping in the First Degree when he intentionally abducts another person with intent to facilitate the commission of Rape of a Child in the Second Degree.

INSTRUCTION NO. 14

To convict the defendant of the crime of kidnapping in the first degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about August 6, 2008, the defendant intentionally abducted L.M.M.,

(2) That the defendant abducted that person with intent to facilitate the commission of Rape of a Child in the Second Degree; and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), and (3) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

Abduct means to restrain a person by secreting where that person is not likely to be found.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner which interferes substantially with that person's liberty. Restraint is "without consent" if it is accomplished any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

INSTRUCTION NO. 16

A "stranger" is defined as meaning that the victim did not know the offender twenty-four hours before the offense.

INSTRUCTION NO. 17

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness's memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence.

Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

You are officers of the Court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.

INSTRUCTION NO. 18

It is a defense to a special finding of sexual motivation in special verdict form B as to Count 2 that at the time of the acts the defendant reasonably believed Leeanthony Manning was not under the age of fifteen .

The defendant has a burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence mean you must be persuaded, considering all the evidence of the case, that it is more probably true then not true. If you find the defendant established this defense, it will be your duty to return a verdict of no as to sexual motivation in special verdict form B as to Count 2.

INSTRUCTION NO. 19

You will also be given a special verdict form or special verdict forms for the crime of Rape of a Child in the Second Degree and Kidnapping in the First Degree with Sexual Motivation for the crimes charged in counts 1 and 2. If you find the defendant not guilty of these crimes: Rape of a Child in the Second Degree and/or Kidnapping in the First Degree with Sexual Motivation, do not use the special verdict form or Forms. If you find the defendant guilty of these crimes of: Rape of a Child in the Second Degree and/or Kidnapping in the First Degree with Sexual Motivation you will then use the special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict forms. In order to answer the special verdict forms "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you cannot as to this question, you must answer "no".

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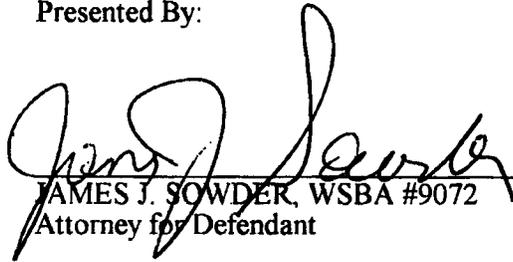
11:05
Sherry W. Parker, Clerk, Clark Co.

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

| | | |
|-----------------------|---|-----------------------|
| STATE OF WASHINGTON, |) | |
| |) | NO. 08-1-01650-1 |
| Plaintiff, |) | |
| |) | DEFENDANTS |
| v. |) | PROPOSED INSTRUCTIONS |
| |) | |
| STEVEN MONROE DILLON, |) | |
| |) | |
| Defendant. |) | |

DEFENDANT'S PROPOSED INSTRUCTIONS TO THE JURY

Presented By:



 JAMES J. SOWDER, WSBA #9072
 Attorney for Defendant

98
AS

INSTRUCTION NO. _____

It is not a defense to the charge of Rape of a Child in the Second Degree if at the time of the act the defendant did not know the age of Leeanthony Manning or the defendant believed him to be older.

It is, however, defense to the charge of Rape of a Child in the Second Degree that at the time of the acts the defendant reasonably believed Leeanthony Manning was at least 14 years of age, based upon declaration said to the age by Leeanthony Manning.

The defendant has a burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means you must be persuaded, considering all the evidence of the case, that it is more probably true than not true. If you find the defendant has established this defense, it will be your duty to return a verdict of not guilty as to the charge of Rape of a Child in the Second Degree.

INSTRUCTION NO. ____

Abduct means to restrain a person by either secreting or holding the person in a place where that person is not likely to be found or using or threatening to use deadly force.

Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner that interferes substantially with that person's liberty.

INSTRUCTION NO. _____

The age of consent for sexual intercourse is sixteen years old.

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY CR
DEPUTY

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

STATE OF WASHINGTON,
Respondent,

v.

STEVEN MONROE DILLON,
Appellant.

No. 40085-5-II

Clark Co. No. 08-1-01650-1

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On Oct 13, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

John A. Hays
Attorney at Law
1402 Broadway
Longview WA 98632

STEVEN MONROE DILLON
DOC # 626600
Washington State Penitentiary
1313 N 13th Avenue
Walla Walla, WA 99362-1065

DOCUMENTS: Brief of Respondent

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

Sumner Casley
Date: Oct 13, 2010.
Place: Vancouver, Washington.