

COURT OF APPEALS
DIVISION II

FILED - 3 PM 12:00

NO. 40680-2-II

STATE OF WASHINGTON
BY *K/S*

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

CHARLES J. DAVIS,

Appellant.

STATEMENT OF ADDITIONAL GROUNDS OF
APPELLANT

APPEAL FROM THE SUPERIOR COURT FOR
THURSTON COUNTY
The Honorable Gary Tabor and Paula Casey, Judges
Cause No. 09-1-00963-9

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ISSUE NO. 1: Improperly applied Rape-Shield Statute.

In addition to what my appellate attorney presented concerning the Rape-Shield Statute, this statement is to show that the trial Court of Thurston County improperly applied the Rape-Shield Statute. Appellant's main goal is a reversal of this conviction and immediate release from custody. The basis for this is RCW 9A.44.020 (2), which applies only to past sexual behavior and this error, which is of constitutional magnitude, violates defendant's Sixth Amendment right to present a defense.

In *State v. Jones*, 168 Wn.2d 713-230 P.3d 576 (2010), the Court of Appeals states that no Washington case has defined the phrase "past sexual behavior" of the Rape-Shield Statute. In *Jones* our State Supreme Court states, when interpreting a statute we must look to its language, if the language is not ambiguous, we give effect to its plain meaning. If a statute is clear on its face, its meaning is to be derived from the language of the statute alone.

Here, in *Jones*, the State Supreme Court states that the language of the statute RCW 9A.44.020(2) states unequivocally that the evidence of the victim's past sexual behavior is inadmissible to prove the victim's consent. Also, any reading of the statute that conflates "past" with "present" sexual conduct is tortured. In *Jones*, his evidence refers to present sexual conduct, not past.

Our State Supreme Court states, if we bar this evidence because of the Rape-Shield Statute, we are effectively reading the word “past” out of the statute. There is no indication that this is what the legislature intended.

As in Jones, my evidence refers not to “past” sexual behavior but to “present” sexual conduct.

Two weeks after the alleged rape, K.C. had on another occasion close in time to the instant case, had consensual sex with a group of men in an automobile, seemingly an act of prostitution, and then remarked to a friend that she would tell her boyfriend that she had been raped.

See (Exhibit No. 1, Pg.1; Exhibit No. 2, Pg. 3; Exhibit No. 3, Pg. 2; and, Exhibit No. 4, Pg. 3) This evidence having high probative value to this defendant’s defense, which a defendant has a Sixth Amendment right to present, particularly, if consent is the defendant’s entire defense.

In a report filed in January 29, 2002 by lead Detective Reinhold of the Lacey Police Department on case #2001-5575, which was a follow up/continuation report concerning an alleged rape and runaway recovery, Detective Reinhold stated K.C. and Jenny ran away at the same time, but Jenny returned several weeks later. See (Exhibit Nos. 1 and 3)

During Detective Reinhold’s interview with Jenny, she provided information about K.C.’s location, and that K.C. told her about being raped and abducted at a 7-Eleven store in Lakewood, an area known for

prostitution and drug dealing. See (Exhibit Nos. 1 and 3) also (Exhibit No. 4, Pg. 7)

Detective Reinhold reports that the details of the rape were very similar to the incident that K.C. reported to her in Lacey, WA.

See (Exhibit No. 1 Pg. 1) Also, during the recovery of K.C. by Detective Reinhold and Detective Char Pesznecker of the Washington State Patrol Missing and Exploited Children Task Force (MECTF) upon their recovery of K.C. in the Tacoma Hilltop area, in Detective Pesznecker's report case #01WA34-044-Runaway Recovery, stated to K.C. that they knew about the alcohol and cocaine abuse, as well as her working as a prostitute.

(see Exhibit No. 2, Pg.3, Para. 7)

Also, in (Exhibit No. 1 Pg. 1) Detective Reinhold spoke with the security guard who was on duty the day of the alleged rape. He stated no one matching the description provided by K.C. was seen on that day and time. He also stated that he routinely spends time by the bathrooms and did not notice anything criminal or suspicious. The IT supervisor was also there around the time of the alleged crime and he did not see anything either.

Defendant was precluded by the trial Court from fully presenting his consent defense. Defendant was entitled to have the jury consider his defense based on all the facts and circumstances that supported consent

functioning as the “counsel” guaranteed. The defendant must show the deficient performance prejudiced the defense. This requires showing that counsel’s “Errors” were so serious as to deprive the defendant a fair trial, a trial whose result is reliable.

Unless a defendant makes both showings, it cannot be said that the adversary process that renders the result unreliable. This test is adopted by the Washington State Supreme Court in *State v Jeffries*, 105 Wn.2d 398, 717 P.2d 722 (1986).

[A] Unprofessional Errors

Appellant’s counsel was constitutionally ineffective when he failed to request from Mrs. Howell, the investigator, a typed formal report of her notes taken while conducting an interview with K.C. on January 5, 2010, which, in turn, a copy should have been presented to the prosecution in time for them to prepare their cross-examination before she took the stand.

Mr. Kauffman’s failure to follow through with Mrs. Howell’s request in her memorandum dated January 7, 2010, which reads, “Please let me know if you need me to clarify any of my notes or if you would like these notes typed up into a formal report,” see (Exh. 4, Pg. 1) resulted in Mrs. Howell being asked to step down from the stand and therefore not being able to give any testimony, which would have revealed discrepancies in K.C.’s statements and, also, her events of a second

alleged rape in Lakewood, WA. See (VRP-167 to 177) also (Exh. 4, Pg. 8)

Also, Mr. Kauffman could not explain to the Court how the rules would apply to his attempt to reveal impeachable statements from K.C. while testifying to her events at the transit center.

Defense counsel had three months to adequately prepare and make all significant decisions in the exercise of reasonable professional judgment and planning a well-prepared direct examination of his own professional witness. See (VRP-167 to 177)

It is apparent that appellant was prejudiced by counsel's failure to properly examine his only witness and his neglect in not having the interview notes typed up into a formal report, which led to the investigator's testimony to be withheld from the jury. This was not a trial strategy.

The identified acts of defense counsel were outside the wide range of professionally competent assistance with a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different.

[B] Failing to Call Witnesses.

Defense counsel failed to call two fact witnesses as he said he would prior to trial. I felt at that time that defense counsel's goal was to mainly avoid working on defendant's behalf.

First, defense counsel did not call security guard, Roy Burns, who was on duty that day and time (VRP-187-189) who stated to the Lacey Police that he did not see any gang members matching the description that K.C. gave to the police. Mr. Burns was not called to testify to his statement, nor did counsel ever inquire into whether Mr. Burns might be willing to testify on defendant's behalf. This was not a trial strategy on the part of defense counsel.

Second, defense counsel did not call or contact the gang task force to do a statewide check on defendant to determine whether the defendant was or had been in a gang. Appellant stated to counsel that he's never been gang affiliated, participated or evaluated in his life. Defendant discussed with counsel and agreed to present evidence of never being a gang member. Counsel had over nine months to prepare for this evidence. Law enforcement - local and statewide - was well-aware of defendant not being a gang member "ever." This was not a trial strategy.

Once again, I feel defense counsel's goal was to mainly avoid working. In such cases, it should be perfectly obvious that it will almost always be useful for defense counsel to speak before trial with readily-available witnesses whose non-cumulative testimony would directly corroborate the defense's theories of important disputes.

[C] Failure to Call a Medical Expert.

Defense counsel never consulted a rape trauma expert or physician before trial about prosecution's evidence that the only way K.C. sustained her injury is through nonconsensual intercourse. (VRP-141 to 144 – Joseph Pellicer/Direct Examination) (Nancy Young/Direct Examination/Pg. 249-14 to Pg. 150-5)

As in *Pavel v Hollins* 261 f.3d 210:2001, defense counsel failed to consult with an expert during pretrial investigation: The Courts state when a sex abuse case boils down to a credibility “contest” and when a case hinges on entirely whom to believe, an expert’s interpretation of relevant physical evidence or lack of it is the sort of neutral disinterested testimony that may well tip the scales and sway the fact finder. Because of the importance of physical evidence in Credibility Contest Sex abuse cases, in such cases physical evidence should be a “focal point” of defense counsel’s pretrial investigation and analysis of the case against his client. And because of the vagaries of abuse indicia, such pretrial investigation and analysis will generally require some consultation with an expert. This is not trial strategy to not call an expert witness. This is incompetency and downright laziness on the part of defense counsel.

Also, in *Pavel v Hollins*, like in this case, defense counsel has no indication in his record that he has the education or experience necessary to assess relevant physical evidence and to make for himself a reasonable,

informed determination as to whether an expert should be consulted or called to the stand: *United States v Tucker*, 716 f.2d 576, 581 (9th Cir. 1983) holding that in a complex fraud case “ it should have been obvious to a competent lawyer that the assistance of an accountant was necessary in *U.S. v Knott*, 671 f.2d at 12-12-13, noting that counsel may be found to be ineffective for failing to consult an expert where “there is substantial contradiction in a given area of expertise” or where counsel is not sufficiently versed in a technical subject matter...to conduct effective cross-examination.

Clearly, defense counsel failed to prepare adequately for trial. In *Pavel v Hollins* defendant’s judgment of the district court was reversed as it should be in this case.

[D] Appellant’s counsel not acting on defendant’s request to present a motion for an interlocutory appeal.

Appellant discussed and directed his attorney to do an interlocutory appeal on the issue raised before the Court on February 8, 2010. Appellant felt that there was merit in doing an interlocutory appeal about the State applying the Rape-Shield Statute to this case. The merit of the appellant’s argument was the phrase, “past sexual behavior” did not apply. See (VRP-Motion Hearing, March 4, 2010 – Pg. 6-7) also, see (VRP-Statement of Defendant, Pg. 6-7)

Appellant's evidence of K.C.'s present sexual behavior, several weeks after she reported the alleged incident in September of 2001, was being sought for appellant's consent defense. Two months after the Honorable Judge Tabor ruled against appellant's entering of the evidence sought (see VRP-statement of defendant Pg. 6-7), our State Supreme Court ruled in *State v Jones*, 166 Wn.2d 1005, 208 P.3d 1124 (2010) that the language of the statute states unequivocally that evidence of the victim's "past sexual behavior" is inadmissible to prove consent. And any reading – (168 Wn.2d 723) – of the statute that conflates "past" with "present" sexual conduct is tortured. Washington's Rape-Shield Statute, RCW 9A.44.020(2), applies only to "past sexual behavior."

This shows that counsel's denial to adequately assist appellant or consult with him on important issues and decisions regarding his defense was extremely detrimental to the outcome of the case. Counsel's lack of follow-through clearly shows his avoidance to fully represent the appellant.

[E] Numerous Deficiencies of Counsel Prejudiced Trial.

The appellant also contends that the numerous deficiencies of the defense counsel prejudiced his trial, rendering the proceeding unfair. It is a reasonable probability that absent the deficiencies, the outcome of the trial would have been different.

In *United States v Harris*, III 64 f.3d 1432: 1995, the United States District Court for the Western District granted relief where the defense counsel committed numerous deficiencies, which had a cumulative impact of severely prejudicing the proceeding and rendering appellant's trial unfair, such as the four points (A – D) previously explained.

In this appellant's case, as in *U.S. v Harris III*, there are numerous deficiencies that had a negative impact on the defense of the appellant. This court should rule in favor for relief in instant case, as in the *Harris* case.

Appellant's Grievance Against Trial Counsel Before Trial

Trial counsel, David Kauffman, did not reasonably consult with defendant about means, which the defendant's objectives are to be accomplished or explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding his representation. There were many instances when counsel failed to consult with defendant. His communication became at best below average. I felt defendant's best interests could be at risk.

Defendant talked to defense counsel about a change of counsel as well as a change of venue. He stated that this was impossible and that he was as good as it gets. I felt that defense counsel wouldn't try to help

defendant in defendant's wishes and matters concerning legal defense issues.

With limited law library access, appellant learned how to read case laws and write motions. Defendant stated for the record (VRP – Statement of Defendant – Pg. 6 and 7) counsel's failure to be helpful. Appellant feels that this confrontation is the reason for the unjustified treatment and lack of professionalism towards appellant and appellant's case. So, appellant filed a grievance against state appointed attorney, David Kauffman, see (Exh. 6) who is no longer practicing law in this state. He has left his job and moved out of the country to join the Peace Corp shortly after appellant's conviction in April 2010.

CONCLUSION: Based on the above, Mr. Davis respectfully requests this Court to reverse and dismiss his conviction.

Dated this 31st day of January 2011

Charles J. Davis

Appellant

A handwritten signature in cursive script that reads "Charles J. Davis".

PROOF OF SERVICE BY MAILING
(from a person in State custody)

11 FEB -3 PM 12:00
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

I, Charles J. Davis, Declare: I am over the age of 21-years, and a party to this action. I am a resident of the Coyote Ridge Corrections Center in the County of Franklin, State of Washington. My prison address is: P.O. Box 769, Connell, Washington 99326-0769.

On the 31st day of January 2011, I served a copy of: Petitioner's Notice of Appeal: Statement of Additional Grounds (SAG) on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope into the United States Mail (Postage Prepaid) in a deposit box as provided at the above named correctional institution, in which I am presently confined. The envelopes were addressed as follows:

Washington State Court of Appeals, Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

and to

John C. S. Kinder
Thurston County Prosecutor's Office
2000 Lakeridge Drive S.W. Bldg. 2
Olympia, WA 98502-6045

and to

Patricia Anne Pethick
Appellant: Attorney at Law
P.O. Box 7269
Tacoma, WA 98417-0269

I certify, state and declare under penalty of perjury, under the law of the United States of America that the foregoing is true and correct to the best of my knowledge. Respectfully submitted the 31st day of January 2011.

Signature Charles J. Davis

FOLLOW UP / CONTINUATION REPORT

<input checked="" type="checkbox"/> FOLLOW UP		<input type="checkbox"/> CONTINUATION		
DO NOT DISCLOSE <input type="checkbox"/>	LACEY POLICE DEPARTMENT		CASE # 2001-5575	
DATE	TYPE OF ORIGINAL REPORT	PRECEDENCE	STATUTE	
01/29/02				
<input type="checkbox"/> 1 (OPEN/REPORT) <input type="checkbox"/> 2 (ARREST CITATION) <input type="checkbox"/> 3 (CONVUL) <input type="checkbox"/> 4 (UNFOUNDED) <input type="checkbox"/> 5 (RESOLVED) <input type="checkbox"/> 6 (REFUSED TO PROSECUTE) <input type="checkbox"/> 7 (REFERRED TO OTHER AGENCY) <input checked="" type="checkbox"/> 8 (LEADS EXHAUSTED) <input type="checkbox"/> 9 (REFERRED TO PROSECUTOR) <input type="checkbox"/> 0 (CANCELLED)				
SUBJECT				
NAME (LAST, FIRST, MI)				
ADDITIONAL CHARGES				
CHG #	STATUTE ORI	STATUTE	DESCRIPTION	COUNTS
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Shortly after reporting the incident, the victim, Kristi [redacted] ran away from home. It was believed she was with her 54 year old boyfriend in Tacoma. Kristi's friend Jenny [redacted] also ran away at the same time. [redacted] returned several weeks later. I spoke with [redacted] who provided some information about Kristi's location. During the time they lived in Tacoma, Kristi told [redacted] about being raped at a 7-11 store in Lakewood. The detail or that rape were very similar to the incident she report in Lacey. On November 27, 2001 Kriski was located at [redacted]. She was in the company of her boyfriend, Curtis [redacted]. [redacted] was arrested on two Lacey warrant and Kristi was released to her mother. I re-interviewed Kristi concerning the rape that occurred in Lacey. She maintained the incident occurred as she originally reported it. I spoke with the security guard, Shawn [redacted] who was on duty at the time of the alleged rape. He stated no one matching the description provided by Kristi was seen on that day and time. He also stated that he routinely spends time by the bathrooms and did not notice anything criminal or suspicious. The IT supervisor, Roy [redacted] was also there around the time of the crime and he did not see anything either. At this time no suspects have been developed, leads exhausted.

OFFICER'S NAME Reinhold	BADGE # 295	ENTERED BY	DATE/TIME
SUPERVISOR		ENTERED BY	DATE/TIME
<input type="checkbox"/> A (ARREST) <input type="checkbox"/> I (DEATH OF OFFENDER) <input type="checkbox"/> 2 (PROSC. DENIED) <input type="checkbox"/> 3 (EXTRADITION DENIED) <input type="checkbox"/> 4 (V REFUSED TO CO-OP) <input type="checkbox"/> 5 (JUVENILE NO CUSTODY) <input type="checkbox"/> N (N/A)			

ENTERED

I asked him where in the men's bathroom they had sex and he said he couldn't remember. Later in the interview he asked if there were video cameras in the bathroom and I told him there was not. He said he then remembered they had sex by the sink in the bathroom.

Davis said he was by himself at the time and there was no one else in the bathroom at the time of the sex. He said he thought it was during the day and it was the one and only time he has seen her. Davis told me he never knew her name.

He described the female as "a little shorter than me, dark hair". He was unsure of her body type and when asked how old he thought she was he said he did not know for sure but she looked over 18.

He said they talked briefly about her boyfriend, but after they had sex, she got on a bus and left. He was unsure where she was going at the time. He could not remember what he did after she left.

At 1420 hours Davis said he thought he should talk to an attorney. I did not ask him any further questions, but he continued to say that the sex was consensual.

While I spoke with Davis, Detective Wilson obtained a telephonic search warrant for a DNA sample from Davis. At 1445 hours Superior Court Judge Thomas McPhee authorized the collection of a buccal swab. Two swabs were collected at 1450 hours and logged into evidence. Davis was then transported to the Thurston County Jail and book on the warrant for Rape 1st.

Officer's Name	Personnel#	Supervisor	Date Faxed
B. Reinhold	295		06/10/09

On June 10, 2009, Tulloch developed information that Davis was in a treatment facility in Tacoma. At approximately 1315 hours, Davis was taken into custody at Sea Mar Treatment Facility. Davis was transported to Dupont where he met CSO Terrell who transported him to the Lacey Police Department.

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At approximately 1355 hours I advised Davis of his constitutional rights which he verbally acknowledged and waived. Davis said he would talk to me but did not want the conversation recorded. I advised him that I was investigating a sex offense that occurred at the Lacey Transit Center in 2001. Davis then told me that he was living in Olympia around that time.

He said he remembered having sex with a female at the transit center, but that it was consensual. Davis indicated he met her there and they started talking about having sex. She asked him where and he suggested the men's bathroom.

Davis said they went into the bathroom, had sex for "less than 2 minutes" and then she got onto a bus. He said he does not remember what he did after that. Davis said he did not remember what position they were in for the sexual intercourse, but said it was vaginal. He could not remember if he was in front of behind her at the time. He also could not remember if they took their clothes off or simply pulled them down.

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EXH-#2

Page 1



WASHINGTON STATE PATROL
INVESTIGATIVE SERVICE BUREAU
INVESTIGATIVE REPORT

Date of Incident : November 27, 2001
WSP Case # : MECTF #01WA34-044

Other Case #: Olympia PD #2001-08533
Lacey PD # 2001-5575

Reporting Detective: Detective Char Pesznecker

Victim: [redacted] Kristi Marie [redacted]

Type of Investigation: Runaway Recovery

Synopsis: MECTF members located and recovered runaway Kristi Caver, and arrested her associate, Curtis Cureton at a residence in the Hilltop area of Tacoma.

Details of Report:

On October 19, 2001 the Olympia and Lacey Police Departments requested the assistance of the Washington State Patrol Missing and Exploited Children Task Force (MECTF) in locating runaway Kristi Marie [redacted]. Olympia PD had entered [redacted] as a runaway as of October 6, 2001. Lacey PD was investigating an alleged sexual assault that [redacted] reported on September 24, 2001. [redacted] was believed to be in the company of her 52-year-old "boyfriend" Curtis E. Cureton.

MECTF pursued several investigative avenues in the attempt to locate [redacted] in the greater Tacoma area. On November 24, 2001 at 2045 hours I received a page from Patricia [redacted] Kristi's mother. Mr. [redacted] related that she received a call from Jenny [redacted] who said that Kristi had called her. During the conversation, Anderson learned that [redacted] was staying with Cureton at [redacted] [redacted] rents the residence. [redacted] told [redacted] that they spend the night there and leave during the day.

I called [redacted] to verify the information and attempt to solicit further details. [redacted] confirmed the information I obtained from Patricia [redacted] and added the following details. She said Kristi told her to pack her bags because they (she and Cureton) were going to pick her up next Friday, 113001. She said [redacted] sounded like she was under the influence of alcohol and/or drugs.

I called Sgt DePalma and advised him of the developments. After discussing several options, we determined to coordinate with Lacey PD Det Reinhold to attempt to locate Caver on Monday evening November 26, 2001. I called Det Reinhold and she agreed with the tentative plan.

Case No. 01WA34-044
Detective Char Pesznecker
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Sgt Habib returned the call. He arranged to have two officers meet us at another Tacoma PD sub-station located at 9th and L St. We traveled to that location and found Officer Garcha. He was unaware of our request, adding that our incident had not been given to dispatch yet. Garcha said he would assist us if no one else responded, once he was finished with the report he was working on.

At 0945 Det Sharp, Det Reinhold and I traveled back to [redacted] St to continue surveillance on [redacted] vehicle. At 1000 hours, Officers Garcha and Pincham arrived. I showed them photographs of [redacted] and [redacted]. At 1005 hours, they made contact at the door while Det Sharp followed, and Det Reinhold and I maintained a perimeter location on the back of the building.

Det Sharp said [redacted] and [redacted] were found sleeping on the floor in a back bedroom. [redacted] was placed into custody. I served him with a copy of the Protection Order and Notice of Hearing at 1010 hours. I also explained to him that he is prohibited from having any further contact with [redacted] and her family. [redacted] said he understood.

Det Reinhold and I contacted [redacted]. She was under the blankets on the floor, unclothed. I assisted her with locating apparel to get dressed, and explained why we were there. [redacted] made the spontaneous statement, "I'm not going back", then made reference to being abused by her father. I explained that I wanted to talk to her about why she ran away, and asked if she would come with us to the Tacoma PD sub-station. She agreed. Det Reinhold stayed with [redacted] and assisted her with packing her belongings while I arranged to have a Lacey PD CSO respond to transport [redacted] from Tacoma to the Olympia City Jail.

Officer Garcha transported [redacted], while Officer Pincham transported [redacted] to the Tacoma PD Operations sub-station. Det Sharp maintained custody of [redacted] until the Lacey PD CSO arrived and transported him. I contacted CPS Caseworker Jeff Monet and asked about the availability of placing [redacted] Haven House. Monet said he would check. He called back a short time later and advised me that Haven House was available to [redacted].

At 1050 hours Det Reinhold and I began a debriefing interview with [redacted]. She was relatively cooperative, willing to speak with us but visibly upset about [redacted] arrest. [redacted] offered to 'go to juvie' instead of having him arrested. We explained that she is not the one who did anything wrong. After many varied attempts to explain the restrictions regarding the Protection Order, [redacted] reluctantly succumbed to believing that she would have to wait until her 18th birthday for [redacted] to 'come and take her away so they can get married'. [redacted] repeatedly said that she [redacted], and Derrell [redacted] were "a family". She said they were going today to look for a house to buy. I asked if they had money set aside for the down payment. She said yes, adding that [redacted] worked two jobs and saved his money for the house.

I asked [redacted] how we could help her. She replied that she didn't care about herself, only [redacted]. I told her we were concerned about the environment she was living in. I told her we knew about the alcohol and cocaine abuse, as well as her working as a prostitute. [redacted] immediately denied the allegations, then admitted to drinking Miller Gold Draft and 211 on a nightly basis. She also explained that she and [redacted] indulged in crack cocaine regularly, the last use being the night before. When asked if she abused any other substances, she said no, then added 'only weed, and cigarettes'. [redacted] was adamant that she is not addicted to crack cocaine. She also said that she and [redacted] decided not to use it anymore in an effort to save money for the house.

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Case No. 01WA34-044
Detective Char Pesznecker
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Mrs. [redacted] responded to the Tacoma PD Operations sub-station where she took custody of her daughter at 1200 hours. According to Det Sharp, there was an emotional, tearful reunion between mother and daughter until they reached the parking lot where Caver demanded to know what information Jennifer [redacted] had told us.

Det Reinhold arranged to interview [redacted] at a later time regarding the alleged sexual assault incident in September. I completed the return of service for the Protection Order against [redacted]. I also advised OPD Det Gallagher of the recovery and requested he clear [redacted] from WACIC/NCIC as a runaway.

Officer's Signature:

CPZ #381

Date:

12/03/01

Supervisor's Signature

Michael D. Palmer 124

Date:

12/01/01

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<i>IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON</i>	
THE STATE OF WASHINGTON, Plaintiff,	NO. 09-1-00963-9 DECLARATION OF JENNY ANDERSON
vs.	
CHARLES J. DAVIS, Defendant.	

I. DECLARATION

I, JENNY ANDERSON, HEREBY STATE AS FOLLOWS:

In October of 2001, when I was fourteen or fifteen, I ran away from home with Kristi Caver. Both of us went to the "Hilltop" area of Tacoma, WA and stayed, for the most part, with Kristi's boyfriend, Curtis. Curtis was forty to fifty years old. He lived with another man named Darryl. I was there less than a month before I called a social services agency because I wanted to come home. Shortly after I returned home, the police found Kristi in the Hilltop area and returned her to her family.

Kristi was involved in a sexual relationship with Curtis at this time. I know this from living in close proximity to them in Tacoma. In particular, I overheard them having sex on more than one occasion at the residence. She further abused alcohol and drugs with him—in particular, crack cocaine. This, I personally observed. While in Tacoma, I did not use illegal drugs, but I did drink alcohol.

**OFFICE OF
ASSIGNED COUNSEL**
1520 Irving St. SW, Suite A
Tumwater, WA 98502
(360) 754-4897

1 Certain facts persuade me that Kristi prostituted herself when we both lived in Tacoma,
2 though I can't say this for certain. I recall several times when Kristi, in public, would walk up to cars,
3 speak with the occupants, and then climb inside and leave the area in the company of the people
4 she had spoken with. I was not close enough to these interactions to overhear any specific
5 conversations, but it did not appear to me that Kristi knew the occupants of these cars before
6 leaving with them. I also recall that Kristi's choice of clothing made me think she was working as a
7 prostitute, and that she frequently had money to spend, though she didn't have a job. The source of
8 this money, to the best of my knowledge, was her boyfriend, Curtis. This last fact, along with the
9 large difference in age between Kristi's and her boyfriend, further makes me think that Curtis may
10 have been acting as Kristi's pimp during the time Kristi and I stayed in Tacoma.

11 I recall one incident at a 7-11, in Tacoma, in particular. Kristi and I were there to use the
12 phone, to arrange for Curtis to pick us up. It was late at night. While we were there, Kristi
13 approached a car that had pulled into the parking lot and began talking with the car's occupants—at
14 least two men. After a short conversation, Kristi got into the car with these men and left the area. I
15 did not see her again until the next morning, back at Curtis' house. Later, Kristi asked me to lie
16 about this incident and to tell Curtis, if he asked, that the men in the car had raped her. I believe
17 she asked me to say this because she was worried that Curtis would be upset if he learned that she
18 had gone with the men willingly.

19 Kristi, in fact, asked me to "cover" for her with Curtis on more than one occasion. Most of
20 these requests from Kristi concerned her behavior involving men besides Curtis. I believe she did not
21 want Curtis to know that she was spending time with other men besides him when we both lived in
22 Tacoma.

23 When we were in Tacoma, Kristi never mentioned being raped in September of 2001, in
24
25

1 Lacey. I did not learn of this incident until I was contacted by Paula Howell, a private investigator
2 retained by Mr. Kauffman to investigate his case, in 2009. Given her behavior as I recall it in 2001, I
3 don't believe that Kristi was raped at that time. Instead, I believe that Kristi lied to police
4 investigators so that Curtis would not know she had willingly had sex with another man.

5 I SWEAR UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE
6 BEST OF MY KNOWLEDGE

7 Signed this 8th day of FEBRUARY, 2010.

8 
9 Jenny Marie Anderson,
10 D.O.B: 9/15/1986

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**OFFICE OF
ASSIGNED COUNSEL**
1520 Irving St. SW, Suite A
Tumwater, WA 98502
(360) 754-4897

Davis, C

F-11

PAULA HOWELL INVESTIGATIONS

P.O. Box 1212
Olympia, WA 98507-1212
Phone: 360-264-7633
Fax: 360-264-6119
pjhpi@scattercreek.com

Exhibit No. 4

MEMORANDUM

TO: David Kauffman
FROM: Paula Howell
DATE: January 7, 2010
RE: State v. Charles Davis

Attached for your review are my notes from the interview conducted with Kristi Caver on January 5, 2010. Please let me know if you need me to clarify any of my notes or if you would like these notes typed up into a formal report.

V5

Kristi Carter w/atty, VA + dpa - John Skinder

met Curtis when she was still 15 yo -
w/ g/f downtown walking around -
at the park or by it - met him there -
friend's name was Shannon who was 18 yo
at the time - white female - dont recall
last name - Curtis black, 5'7", glasses,
missing some teeth, slender but has a
stomach, like someone from Africa -

she + Curtis just talked - just friends -
few months later they began dating -
~~beg~~ after she turned 16 yo - w/ Curtis
thru DOJ + after - she was returned home
for about 5 years total - they broke it
off when she was 7 mo preg w/ their 2nd a kid -
she was due Aug 9-10 - V got phone call
from a girl who said she was ~~at~~ Curtis'
g/f + was pregnant + due same time as V

Curtis older than her - Curtis' friend
told V how old Curtis was - friend did
this cuz Curtis lied at 1st when he ~~said~~ told V
his age -

V spent time regularly w/ Curtis - parents
adnt want V around Curtis - reg. routine
for her to sneak out to meet Curtis

①

Dol has got to be a Sunday cuz recalls going to school next day & trying to get thru the day - dont recall what grade she was in

mom dropped her off at station - v had to figure out which bus to take downtown - recalls seeing several men - recalls seeing security guard in truck w/paper covering face - she was dragged into Bath

she was trying to look at the bus schedule - trying to find a map - guard was right in front of the ~~across from~~ ^{across from} men's - near grass line - side of Freddy's - group of men come from opposite side of Freddy's -

men had blue bandanas - blue clothes - necklaces - not black or white but they ~~to~~ had color - the one she recalls was mix of 1/2 white 1/2 black - the others were all mixed -

she did not see them approaching her cuz she was looking for bulletin - they came around the corner & she asked which bus would take her downtown - then everything took place

x ages - dont know - maybe their 20's - ^{all of them}
when she asked @ sch that's when she was
drag into the men's bathroom - couldn't
yell cuz she was told to shut up - in her
mind when you are told to shut up you
shut up - she didnt know what they
had but they had blue bandanas/clothes = gang
believes there were more than 5 men

they grabbed her & pulled ~~in~~ her into
bathroom all the way into the back - she
didnt scream but she was resisting - she
was being pulled by both arms & was
also being pushed in the back - they
told her to shut up - they got her into
bathroom pretty quickly -

dont recall layout of bathroom - recalls
seeing stalls they pass before getting
~~to~~ to big stall in back - there was no
one else in the bathroom -

both arms were being held - someone
pushed her back & her head - her hands
were on the walls - her arms were being
squeezed around elbow area - her legs
were being held apart & down - ^{feet on floor} she was on ⁴ toilet

rape was vaginal but she recalls being
hit between vagina & anus

at least 2 guys raped her - both used same position

recalls in beginning she was told to shut up - afterwards she heard one of them saying that he had a wife -

period of time she was in bathroom - rape was maybe 5-7 minutes - don't really remember -

don't think anyone else entered restroom - there was a door on the stall - handicap sign on door - it was open after she was put in stall -

she didn't yell but was saying no & to stop - tried to move her arms & legs - she was not hit by any of them

one she saw up close was the 1/2 black 1/2 white - he was the main one, he was the first one - she could not see who the second one was -

how it ended - one of the men saying he had a wife - then she heard the door shut - then she was cleaning up blood -

x then she left - remembers somehow getting to downtown - don't recall talking to guard - recalls looking & saw he was still in the truck w/ the paper -

didn't contact guard - cuz why? he wasn't doing his job

she did not want anyone to know - she did not contact anyone - fax that back, she did tell Curtis - Curtis looked upset + that's all she recalls - recalls he was really upset -

don't recall how she got downtown to Curtis - recalls talking to him + that he was upset - Curtis was 1st person she had contact with after the rape - doesn't know how long she stayed w/ him - she did go home later but doesn't recall how she got there - her mental state at time she can't really say - all she recalls is being here but not being here -

next day she went to school - in a lot of pain - she tried to cover it up cuz didn't want anyone to know - she went to restroom + met friend in hallway who noticed something was wrong w/ the way she walked - friend ^{sarah} called for nurse - V wasn't able to sit down - mom was called + came to pick her up - V doesn't recall talking to the nurse - mom didn't know @ rape, only that V hurt

V was not in a lot of pain when she got home DOL - pain began next day - went to hosp + found out she was swollen + torn -

V was questioned in the hosp - don't recall when + how she told her mom - mom knew V was hurt - nurse called mom + mom took her to hosp -

prior to this she was somewhat of a drug user + a drinker - then she was called a liar by det Reinhold + then she recalls leaving + going to Tac + getting hooked on drugs

until not too long ago + mom said Reinhold called + wanted to talk to her

called a liar - was told they wanted more info out of her but she had nothing more to provide

V decided to leave home - mom kept asking are you sure it wasn't Curtis? V fed up for being called a liar -

V met up w/ a friend at mega foods - v told friend what she was going to do + if friend wanted to go she had to stick it out + not bail out or V would go alone

friend decided to run away - they went to HillTop + met Curtis - away from home but cant recall how long - she became a drug addict - crack ~~crack~~ cocaine + also drank alcohol - used w/ Curtis + also on her own - also used when she came back home - friend did not use drugs but did drink alcohol -

7-11 incident in Lakewood - recalls she went to the store for smokes - then she was drug into SUV by 2 black men - one named Kenny + one name Couzey - ended up at Ecrolodge in life + having knife to throat + later ^{recalled} at the hotel
wasnt w/ Jenny cuz was mad at her + went alone - had not met guys before this -

Kenny said something about his mom being dead in a ditch - next she recalls waking up + her stuff was gone - she called Curtis to come get her - a lady came in + said her time was up + V wasnt supposed to be there - V recalls going downstairs + waiting for Curtis -

she did not call police - she did tell Curtis but no one else - guys had said they werent from here - when something happens to her she is not the type to tell everyone

~~prostitution~~ prostitution - never did that -
was w/ Curtis 24/7 - drugs were from
Curtis & other friends while she was in
the Hilltop - afterwards ^{when she went home to parents -} she got drugs in Oly -
Curtis picked her up & they went back
to Hilltop - don't recall timeframe of
when this happened - don't recall telling
Jenny & rape

no contact now w/ Curtis - Michigan
maybe - Curtis pays support thru state -
she gets stmnts thru Bank of Am - he
has paid w/ last couple months - state
goes after him - he can go to jail if
he doesn't pay - she doesn't know how
to contact him - he moves around a lot -
prob no longer in Michigan - his g/f is
Brook Wright - when V was 17-18 Brook was w/

at Hilltop police found her - V was angry
about coming home - recalls Reinhold there
& she was angry & did not want to see
her - V recall all but her being searched
for drugs - house was also searched -

case was dropped as soon as Ber said
V was a liar - this was before V ran away -
when she was found she was not asked & case

want to happen = not life but a few
years + counseling - feel what if this was your
V not asked to provide add'l stmt daughter?

Exhibit No. 5



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Senior Disciplinary Counsel

May 12, 2010

Charles J. Davis
Thurston County Jail
2000 Lakeridge Dr SW
Olympia, WA 98502

Re: WSBA File: 10-00817
Your grievance against lawyer David W. Kauffman

Dear Mr. Davis:

We received your grievance against a lawyer and assigned the file number indicated above. We appreciate receiving information from the public about lawyers licensed in Washington state. However, our authority and resources are limited. The Washington State Bar Association is authorized to investigate a grievance against a lawyer to determine whether the lawyer's conduct should have an impact on his or her license to practice law. We are not a substitute for protecting your legal rights. We do not and cannot represent you in legal proceedings.

We reviewed your grievance and determined that your primary concern is the manner in which your lawyer represented you in a criminal case. Ineffective assistance of counsel issues are best raised in court proceedings. Therefore, the general policy of this office is not to investigate claims of ineffective assistance of counsel unless there is a judicial finding of impropriety. It does not appear that the court found any impropriety.

We believe it is in your best interest, and in the best interest of the lawyer against whom you are complaining, that we tell you as soon as possible if it appears that the conduct you describe is not within our jurisdiction, does not violate the Supreme Court's Rules of Professional Conduct (RPC), or does not warrant further investigation by our office. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only upon a showing by a clear preponderance of the evidence that the lawyer violated the RPC.

Based on the information we reviewed, there is insufficient evidence to warrant further action; therefore, we are dismissing your grievance under ELC 5.6(a). If you do not mail or deliver to us a written request for review of this dismissal within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final. Should there be a judicial finding of impropriety, you may request that we reopen this matter. Absent special circumstances, and unless we are provided with reasons to do otherwise, we will forward to you a copy of any response we receive from the lawyer.

Sincerely,

A handwritten signature in cursive script, appearing to read "Felice P. Congalton".

Felice P. Congalton
Senior Disciplinary Counsel

Enclosure: Lawyer Discipline in Washington

cc: David W. Kauffman
(with enclosure and copy of grievance)

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MARCH 4, 2010

HONORABLE GARY R. TABOR, PRESIDING

* * * * *

MR. TOYNBEE: Next, Your Honor, is number three, State versus Charles Davis. Mr. Skinder for the State and Mr. Jimerson representing the defendant for today's hearing.

MR. JIMERSON: Your Honor, Mr. Davis is in custody. He's represented by David Kauffman, who is not here.

This was a pro se motion that Mr. Davis filed. I believe Mr. Kauffman was not aware of the motion. It's my understanding Mr. Davis has a status hearing Wednesday morning of next week. Given Mr. Kauffman's lack of notice and unavailability, I'd ask that we either continue this matter a week or put it on the status calendar where it already is.

THE COURT: Well, it is my practice when a person is represented to not accept the pleadings from the individual, so I'm not inclined to consider Mr. Davis' motion in any event. If Mr. Kauffman wishes to make such a motion that can be made at a future time.

MR. JIMERSON: Yes, Your Honor.

THE COURT: Either the status hearing or else

1 some other time.

2 MR. JIMERSON: Yes. Thank you, Your Honor.

3 MR. SKINDER: Thank you. So the Court is
4 striking it?

5 THE COURT: I am.

6 MR. SKINDER: Thank you.

7 (Proceedings were concluded.)

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