

FILED
COURT OF APPEALS
DIVISION II

10 DEC 10 PM 1:35

STATE OF WASHINGTON
BY  DEPUTY

No. 41556-9

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT

OF

DANIEL MARSHALL AGUIRRE,

Petitioner.

DECLARATION OF APPELLATE COUNSEL
SHERYL GORDON MCCLOUD

Sheryl Gordon McCloud
710 Cherry St.
Seattle, WA 98104-1925
(206) 224-8777
Attorney for Petitioner
Daniel Marshall Aguirre

I, Sheryl Gordon McCloud, do state:

1. I am an attorney at law, licensed to practice before this Court, and I have been retained to represent Daniel Aguirre in the above-entitled case.

2. On April 12, 2007, I sent a letter to George Steele requesting that he send "all your files in this case" to my office. A true and accurate copy of this letter is attached to this Declaration as Exhibit A.

3. In the files received from Mr. Steele's office, I found a written plea offer from the state. The plea offer was accompanied by a cover letter dated November 17, 2006. The plea offer was that Mr. Aguirre could plead guilty to one count of second-degree assault and one count of third-degree rape and that in exchange, the prosecutor would recommend a standard Guidelines range sentence of 14 months in prison. The deadline to accept the offer was the close of business on November 30, 2006. A true and correct copy of that plea offer and cover letter are attached to this Declaration as Exhibit B.

4. On June 5, 2007, I faxed to defense trial counsel George Steele's office a request to review the correspondence file in Mr. Aguirre's case. I received assurances from Mr. Steele's

office that I had received copies of the entire correspondence file in Mr. Aguirre's case. The faxed request and Mr. Steele's response are attached to this Declaration as Exhibit C.¹

5. I reviewed the correspondence file that defense counsel sent me. The file contains no letter transmitting the prosecutor's November 17, 2006, offer to the client, Daniel Aguirre. It contains no notation about discussing this with the client, either.

6. Mr. Aguirre stated that he was never told of this plea offer. His original Declaration is attached to this Declaration of Counsel as Exhibit D.

7. Mr. Aguirre's parents, Rose and Jim Aguirre, are very close to their son. They discussed all important aspects of his case with him before, during, and after the trial, and they helped him make important decisions involving this case. They clearly remember that Daniel Aguirre never mentioned anything about a deal like this. The original Declarations of Rose and Jim Aguirre are attached as Exhibits E and F, respectively, to this Declaration of Counsel.

¹ The cover letter from Mr. Steele's office bears the date "April 15, 2007" but a date-received stamp of "June 18, 2007." The letter was clearly sent in response to the June 5, 2007, facsimile request. It is unclear why the letter bears an incorrect date.

8. Mr. Aguirre was incarcerated at the Thurston County Jail while the plea offer was in effect – between November 17, 2006, and November 30, 2006. Since Mr. Aguirre was in jail, all of his visitors were recorded. I hired an investigator to visit the Thurston County Jail and examine the jail logs.

9. The investigator visited the Thurston County Jail and reported that the professional visit logs are maintained by the jail staff. She further reported that the jail staff are the only people that write down information in the logs. They record the name of the person entering or exiting as well as the time. The logs are “view only” documents, and the jail staff would not let the investigator photograph the logs. Instead, she took handwritten notes, and created a timeline of visits that George Steele paid to the jail. That timeline is attached to this Declaration as Exhibit G, along with the investigator’s original Declaration.

10. The investigator’s research reveals that the only visit that Mr. Steele made to Mr. Aguirre during the pendency of the plea offer was late in the afternoon on November 30. On that day, Mr. Steele spent seven minutes visiting Mr. Aguirre, and left the visiting booth at 3:37 p.m. Exhibit G.

11. I made an appointment to meet with Mr. Steele to ask him what he remembered about these events. Mr. Steele cancelled our appointment the night before it was supposed to occur. Mr. Steele's assistant advised me that he would not do anything to assist Mr. Aguirre or any more work on the Aguirre case, because Mr. Aguirre had an outstanding bill.

12. I advised Mr. Steele's assistant that the purpose of the interview was because he was a witness, not because we were attempting to get him to do more work. Mr. Steele's assistant advised me that Mr. Steele would not meet with me.

13. Following Mr. Aguirre's trial and conviction, the Army subjected him to a separation hearing. The same complainant, Ms. Emily Laughman, testified at that hearing. A true and correct copy of Ms. Laughman's Separation Hearing testimony is attached to this Declaration as Exhibit H (though she is incorrectly identified there as Ms. McLaughlin.)

14. A true and correct copy of Ms. Laughman's testimony at trial is attached to this Declaration as Exhibit I.

15. Mr. Steele, defense trial counsel, did not file a sentencing memorandum. A true and correct copy of the the

Superior Court Docket showing that no sentencing memo was filed is attached as Exhibit J.

16. Mr. Steele failed to present any mitigating factors at sentencing. He did not present Mr. Aguirre's medical or social history, or the effect of PTSD and how that condition, resulting from meritorious service in Iraq, could be considered in mitigation of punishment. Mr. Steele did not offer any evidence of factors that might mitigate the sentence or justify a sentence at the low end, or below the low end, of the standard range. A true and correct copy of the transcript of the sentencing hearing is attached to this Declaration as Exhibit K.

17. My office submitted requests for information to the Department of the Army and the Thurston County Jail and received easily available evidence in support of mitigation. This evidence is attached to this Declaration as follows:

- Exhibit L Medical Record Report, Madigan Army Medical Center, dictated 10/30/05
- Exhibit M Army Orders, 231-019
- Exhibit N Army Orders, 260-21
- Exhibit O DD214, Certificate of Release
- Exhibit P Aguirre Letter to Separation Board 8/19/07

- Exhibit Q Service School Academic Evaluation Report
5/20/05
- Exhibit R Service School Academic Evaluation Report
8/9/06
- Exhibit S Letter from Colin A. Lineham, MD, MAJ, MC,
USA, Staff Physician
- Exhibit T Thurston County Correction Facility Progress
Notes
- Exhibit U Chronological Record of Medical Care 9/5/04
- Exhibit V Initial Assessment of Inmate, 9/27/06
- Exhibit W Health Record, 3/16/06
- Exhibit X Health Record, 4/6/06
- Exhibit Y Health Record, 4/18/06
- Exhibit Z Health Record, 5/3/06
- Exhibit AA Thurston County Corrections Facility Flow Chart

18. Mr. Steele did not present any of this information at trial.

19. Since Mr. Daniel Aguirre never supplied Mr. Steele with much of this background information, Mr. Steele could not have transmitted it to the prosecution in out-of-court discussions, either.

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

Dated this 9th day of December, 2010.

Seattle WA
Place

Sheryl Gordon McCloud
Sheryl Gordon McCloud, WSBA #16709

CERTIFICATE OF SERVICE

I certify that on the 9th day of December, 2010, a true and correct copy of the foregoing Declaration of Counsel in Support of Personal Restraint Petition was served upon the following individuals by depositing same in the U.S. Mail, first-class, postage prepaid:

Carol LaVerne, DPA
George Oscar Darkenwald, Special DPA
Thurston County Prosecutor
2000 Lakeridge Dr. SW, Bldg 2
Olympia, WA 98502-6090

Daniel Aguirre, DOC #303570
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Sheryl Gordon McCloud

Sheryl Gordon McCloud

FILED
COURT OF APPEALS
DIVISION II

10 DEC 10 PM 1:35

STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX

A


Sheryl Gordon McCloud

April 12, 2007

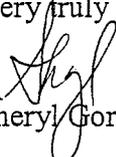
George Alan Steele
Law Offices of George Steele, LLC
P.O. Box 2370
Shelton, WA 98584-5061

Re: State v. Aguirre

Dear George:

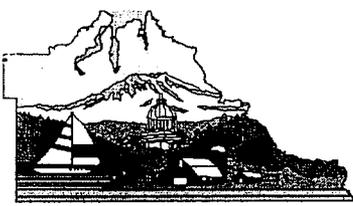
I enclose an Authorization for Release of Records form signed by Daniel Aguirre. Please send all your files in this case to my office. Thank you for your help.

Very truly yours,


Sheryl Gordon McCloud

SGM: sk
Encl.

APPENDIX B



THURSTON COUNTY
WASHINGTON
SINCE 1882

EDWARD G. HOLM
PROSECUTING ATTORNEY

November 17, 2006

George A. Steele, Attorney-at-Law
P.O. Box 2370
Shelton, Washington 98584

RE: State v. Daniel Aguirre, #06-1-1702-5

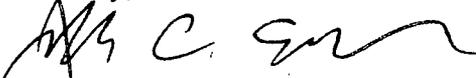
Dear George:

Per your request, I have enclosed a plea offer to your client. Based on his current charges, his standard range is 123-159 months minimum to a maximum of life in prison per RCW 9.94A.712. Based on the nature of the Rape in the Second Degree charge, Mr. Aguirre would also face lifetime community custody if convicted of this offense.

As I have discussed with you, the victim in this case does not want your client to harm anyone else in the future and she is hopeful that treatment might help him. I anticipate this case proceeding to trial as I do not see your client taking responsibility for his actions. But, you have requested that I make a plea offer to your client and I have done so. The offer is that your client would plead to one count of Assault in the Second Degree (D.V.) and a reduced charge of Rape in the Third Degree (D.V.) with an agreed recommendation on the part of the parties of fourteen (14) months at the Department of Corrections with thirty-six (36) to forty-eight (48) months of community custody (RCW 9.94A.712 does not apply to the charge of Rape in the Third Degree). Included in the conditions of community custody would be the requirement that your client be evaluated for domestic violence, mental health, and sexual deviancy issues and comply with any recommended treatment.

This offer will expire at 5 p.m. on November 30, 2006 if not accepted in writing beforehand. If you have any questions regarding this case, please feel free to contact me.

Sincerely,



John C. Skinder
Deputy Prosecuting Attorney

Thurston County Prosecuting Attorney's Office – Special Victims Team
2000 Lakeridge Drive SW, Bldg. 2, Olympia, WA 98502 ph. 360/709-3230, fax 360/709-3242

STATE'S RECOMMENDATION
ON PLEA OF GUILTY

State v. Daniel M. Aguirre #06-1-1702-5

Current Charges: Ct. 1: Assault in the Second Degree (D.V.); Ct. 2: Assault in the Second Degree with a Deadly Weapon Enhancement (D.V.); Ct. 3: Rape in the Second Degree (D.V.)
Standard range for these offenses is 123-159 months to LIFE under RCW 9.94A.712 with lifetime supervision also per RCW 9.94A.712.

PLEA: Plead guilty to Assault in the Second Degree (D.V.) and Rape in the Third Degree (D.V.)

INCARCERATION PER AGREED PLEA RECOMMENDATION: 14 months

Thurston County Jail

Department of Corrections (DOC)

Work Release if eligible

EHM if eligible

_____ Days may be converted
to Community Service Hours

Defendant is required by law to remain in custody pending sentencing. See RCW 10.64.025(2).

FINANCIAL OBLIGATIONS:

\$200 Court Costs, \$100 DNA Fee, \$500 Crime Victim Compensation Fund, and Court appointed counsel fees as ordered

RESTITUTION for medical expenses or ongoing counseling related to this offense

A PSI is required for all sex offenses.
See, RCW 9.94A.110.

COMMUNITY SUPERVISION/PLACEMENT/CUSTODY: 36-48 months supervision by DOC

NO CONTACT WITH VICTIM FOR LIFE
 No criminal law violations;
 Obey all rules of D.O.C.;

Sexual Deviancy Treatment as Required by CCO;
 Mandatory Polygraph as required by CCO to monitor compliance with sentence;
 Not possess or peruse any sexually explicit material as defined by therapist/CCO;

No Possession or Consumption of Controlled Substances unless by Lawful Prescription, and random urinalysis as required by DOC/Community Corrections Officer (CCO);

Mandatory HIV Test;
 Mandatory DNA Testing;

Domestic Violence evaluation and treatment as ordered by CCO;

Comply W/ Mandatory Sex Offender Registration;

Mental Health treatment as ordered by CCO;

Living conditions to be approved by CCO;

Geographical Restrictions as ordered by CCO;

Other conditions recommended in PSI report

DATE OF OFFER: 11/17/06

OFFER EXPIRES: 11/30/06, unless accepted in writing beforehand

Note: All offers subject to revision and/or revocation without notice. Offer may be revoked without further notice if defendant fails to appear for any hearing(s) or trial.

DPA: JCS

Aguirre) *714*

9A.44.050. Rape in the second degree.

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2) Rape in the second degree is a class A felony.

APPENDIX C



Faxed
6-5-07

FACSIMILE COVER SHEET

DATE: June 5, 2007

TO: George Steele

FROM: Lynda Zeis/Stacy Kinzer, Legal Assts. to
Sheryl Gordon McCloud
Phone: (206) 224-8777
FAX: (206) 623-5951

Re: Daniel Aguirre

SENDING 2 PAGES (INCLUDING COVER SHEET)

FAX NO. (360) 426-3732

MESSAGE:

Mr. Steele:

We would like to review your correspondence file for Mr. Aguirre. We have attached the Authorization for that purpose. Please let us know the costs to receive that file and we will gladly reimburse you for those costs.

Thank you.

PLEASE NOTE OUR NEW ADDRESS:

LAW OFFICES OF SHERYL GORDON McCLOUD
710 Cherry St.
Seattle, WA 98104-1925
Tel: (206) 224-8777; Fax: (206) 623-5951

Follow-up 6-13-07 - LZ - status of receipt - left message.

CONFIDENTIALITY NOTICE: This is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the address below via the U.S. Postal Service. Thank you.

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-710 ASSOCIATES -

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GEORGE A. STEELE, LLC

Attorney at Law

PO Box 2370 Shelton, Washington 98584

Shelton: 360-426-2928 Olympia: 360-943-1701 Tacoma: 253-207-4350

Fax: 360-426-3732

Attorney

George A. Steele

Legal Assistants

Olene Cheryl Steele.

Kathleen Speer

April 15, 2007

Sheryl Gordon McCloud
Attorney At Law
710 Cherry Street
Seattle, WA 98104-1925

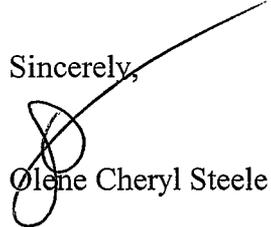
RECEIVED
JUN 18 2007
S. GORDON McCLOUD

Re: Daniel Marshall Aguirre
Thurston County Superior Court 06-1-01702-5

Dear Ms. McCloud:

Enclosed per your request and the signed release from Mr. Aguirre please find the case correspondence and a CD which includes phone messages from Mr. Aguirre.

Sincerely,


Olene Cheryl Steele

Encl: As stated

APPENDIX D

DECLARATION OF DANIEL AGUIRRE

I, Daniel Aguirre, do state:

1. I was charged with second-degree rape and second-degree assault. I was represented at trial by George Steele.

2. Mr. Steele never told me that the state had made an offer to allow me to plead guilty to the lesser charge of third-degree rape, in exchange for a sentencing recommendation from the state of 14 months in prison. Mr. Steele never showed me the prosecutor's letter dated November 17, 2006, extending this offer, or the written terms of the plea agreement attached to it. He never told me about any plea offer in November of 2006. The first I heard of this offer was after the trial and sentencing were over, and my appellate lawyer obtained my trial lawyer's files.

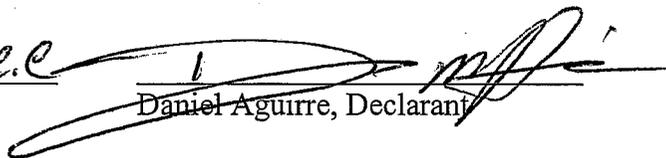
3. Mr. Steele also never told me that if I were convicted at trial of second-degree rape as charged, that the mandatory sentence would be life in prison with the possibility of earlier release lying solely the discretion of a reviewing board.

4. Mr. Steele never discussed with me the good points and bad points about the state's November, 2006, offer; specifically, that the plea offer carried a recommended sentence of 14 months and a highest possible maximum sentence of 5 years, while a loss at trial carried a mandatory sentence of life imprisonment. I know that no one ever told

this to me because the difference in the sentences is so great, that I certainly would have remembered if anyone had mentioned it to me.

5. I do recall Mr. Steele talking to me about a plea offer at one point, but it wasn't this one. At the end of December, right after Christmas of 2006, he talked to me about a plea offer. I know that it was right around Christmas, because I was released on electronic home monitoring pending trial before that time, but the release was revoked right around Christmas time. Then, when I was back in jail again, my lawyer talked to me about a plea offer for the first time. That was a plea offer for either 48 or 58 months. The lawyer told me that even if I were convicted after a trial I would not receive a sentence of more than 70-some odd months. The lawyer never said that I could receive a sentence of life in prison, and he never said that I could receive a sentence higher than those 70-odd months, either. This 48 or 58 month plea offer was the only one that Mr. Steele ever discussed with me.

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

2-29-08 S.L.C.C. 
Date/Place Daniel Aguirre, Declarant

APPENDIX E

DECLARATION OF ROSE AGUIRRE

I, Rose Aguirre, do state:

1. I am Daniel Aguirre's mother.
2. When Daniel was arrested and placed in jail, he stayed in contact with me and my husband. Daniel remained in contact with us by phone and by letter.
3. Daniel spoke to us often about the progress of his case. We were quite involved, because he is our son; we hired the lawyer who represented him; we maintained contact with First Sgt. Kelley, his supervising officer; and we tried to help Daniel at that time with everything he had to do concerning the Army, his apartment, his wife, his children, and his defense.
4. During the time that he was at the jail, Daniel shared with us all of the important information that his trial lawyer was giving to him.
5. I know that Daniel was charged with second-degree rape and second-degree assault. But Daniel never told me that the state had made an offer to allow him to plead guilty to the lesser charge of third-degree rape, in exchange for a sentencing recommendation from the state of 14 months in prison. In particular, he never told me about any such offer in November of 2006.
6. Daniel never told me that if he were convicted at trial of second-degree rape as charged, that the mandatory sentence would be life in prison with the possibility of earlier release lying solely the discretion of a reviewing board.
7. The trial lawyer whom we hired, George Steele, never told me about the plea offer to a charge of second-degree rape with a 14-month sentencing recommendation.

8. Mr. Steele never told me that the sentence that Daniel faced, if he lost at trial, was a sentence of life imprisonment.

9. Neither Daniel nor Mr. Steele ever discussed with me the good points and bad points about this 14-month offer; specifically, neither of them ever said that the plea offer carried a recommended sentence of 14 months and a highest possible maximum sentence of 5 years, while a loss at trial carried a mandatory sentence of life imprisonment. I know that no one ever told this to me because the difference in the sentences is so great, that I certainly would have remembered if anyone had mentioned it to me.

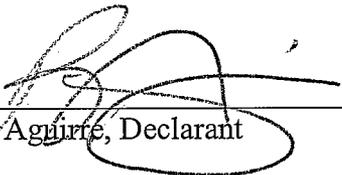
10. I do recall Daniel talking to me about a plea offer at one point, but it wasn't this one. At the end of December, right after Christmas of 2006, he talked to me about a plea offer. I know that it was right around Christmas, because Daniel was released on electronic home monitoring pending trial before that time, but the release was revoked right around Christmas time. Then, when Daniel was back in jail again, he told us that his lawyer talked to him about a plea offer for the first time. That was a plea offer for either 48 or 58 months. When we discussed that plea offer with Daniel, he told us that the lawyer told him that even if he were convicted after a trial he would not receive a sentence of more than 70-some odd months. The lawyer never said that Daniel could receive a sentence of life in prison, and he never said that Daniel could receive a sentence higher than those 70-odd months, either. This 48 or 58 month plea offer was the only one that Daniel ever discussed with us.

11. We did talk to Daniel about other plea offers that he might take. We discussed the fact that it might be advisable for him to plead guilty to assault alone, rather

than standing trial on assault and rape, because we believed that he could stay in the military with an assault conviction but could not stay in the military with a rape conviction. But these were not actual plea offers that we were discussing – these were our private discussions about the sort of deal that we would like to see, but never did see.

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

March 4, 2008
Date/Place



Rose Aguirre, Declarant

APPENDIX F

DECLARATION OF JIM AGUIRRE

I, Jim Aguirre, do state:

1. I am Daniel Aguirre's father.
2. When Daniel was arrested and placed in jail, he stayed in contact with me and my wife. Daniel remained in contact with us by phone and by letter.
3. Daniel spoke to us often about the progress of his case. We were quite involved, because he is our son; we hired the lawyer who represented him; we maintained contact with First Sgt. Kelley, his supervising officer; and we tried to help Daniel at that time with everything he had to do concerning the Army, his apartment, his wife, his children, and his defense.
4. During the time that he was at the jail, Daniel shared with us all of the important information that his trial lawyer was giving to him.
5. I know that Daniel was charged with second-degree rape and second-degree assault. But Daniel never told me that the state had made an offer to allow him to plead guilty to the lesser charge of third-degree rape, in exchange for a sentencing recommendation from the state of 14 months in prison. In particular, he never told me about any such offer in November of 2006.
6. Daniel never told me that if he were convicted at trial of second-degree rape as charged, that the mandatory sentence would be life in prison with the possibility of earlier release lying solely the discretion of a reviewing board.
7. The trial lawyer whom we hired, George Steele, never told me about the plea offer to a charge of second-degree rape with a 14-month sentencing recommendation.

8. Mr. Steele never told me that the sentence that Daniel faced, if he lost at trial, was a sentence of life imprisonment.

9. Neither Daniel nor Mr. Steele ever discussed with me the good points and bad points about this 14-month offer; specifically, neither of them ever said that the plea offer carried a recommended sentence of 14 months and a highest possible maximum sentence of 5 years, while a loss at trial carried a mandatory sentence of life imprisonment. I know that no one ever told this to me because the difference in the sentences is so great, that I certainly would have remembered if anyone had mentioned it to me.

10. I do recall Daniel talking to me about a plea offer at one point, but it wasn't this one. At the end of December, right after Christmas of 2006, he talked to me about a plea offer. I know that it was right around Christmas, because Daniel was released on electronic home monitoring pending trial before that time, but the release was revoked right around Christmas time. Then, when Daniel was back in jail again, he told us that his lawyer talked to him about a plea offer for the first time. That was a plea offer for either 48 or 58 months. When we discussed that plea offer with Daniel, he told us that the lawyer told him that even if he were convicted after a trial he would not receive a sentence of more than 70-some odd months. The lawyer never said that Daniel could receive a sentence of life in prison, and he never said that Daniel could receive a sentence higher than those 70-odd months, either. This 48 or 58 month plea offer was the only one that Daniel ever discussed with us.

11. We did talk to Daniel about other plea offers that he might take. We discussed the fact that it might be advisable for him to plead guilty to assault alone, rather

than standing trial on assault and rape, because we believed that he could stay in the military with an assault conviction but could not stay in the military with a rape conviction. But these were not actual plea offers that we were discussing – these were our private discussions about the sort of deal that we would like to see, but never did see.

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

4 MAR 08 CHAPMAN KS 
Date/Place Jim Aguirre, Declarant

APPENDIX G

DECLARATION OF KAREN SANDERSON

I, Karen Sanderson, do state:

1. I am the owner of Sanderson Investigations located at 705 2nd Avenue, Suite 401, Seattle, WA, 98104. I am a licensed private investigator in the State of Washington and my license number is 2363.

2. I was hired by the Law Offices of Sheryl Gordon McCloud to visit the Thurston County Jail and investigate the jail visitor logs.

3. When I visited the Thurston County Jail, I learned that the professional visit logs are maintained by the jail staff. The jail staff are the only people that write down information in the logs. They record the name of the person entering or exiting as well as the time.

4. The logs are "view only" documents, and the jail staff would not let me photograph the logs. In order to get copies, the logs would have to be subpoenaed. Instead, I took handwritten notes of the visits that George Steele paid to the jail and who he was visiting. I then created a timeline that showed these visits. A copy of the timeline that I created is attached to this Declaration.

5. The only visit that Mr. Steele made to Mr. Aguirre during the pendency of the plea offer was late in the afternoon on November 30. On that day, Mr. Steele spent

KS

seven minutes visiting Mr. Aguirre, and left the visiting booth at 3:37 p.m. See attached timeline.

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

10-7-2010 Seattle, WA Karen Sanderson
Date/Place Karen Sanderson, Declarant

Date	Jail visits	Attorney activities	Court	Jail medical	Client
Nov 1				DA seen at jail medical multiple times today; describes PTSD, to start new psych meds [DA's med records, progress notes starting 11/1/06]	
Nov 9	George Steele visits DA at the Thurston County jail in booth 18 from 9:00 – 9:11 am [Reviewed jail logs in person on 3/13/08]		Hearing continued: stipulated Pretrial/omnibus [court docket from 11/9/06]		
Nov 13					DA writes Steele letter dated 11/13, thanking him for his work on his case [Attorney Steele's file, "2 nd set of materials" file, page 27 of 52 pages]
Nov 15	George Steele visits Trevor Bowman in booth 16 from 10:10 – 10:40 am [Reviewed jail logs in person on 3/13/08]	Trevor Bowman was convicted on a DV assault case out of Olympia Muni Court; he had a probation violation report filed; On Nov 15 th the docket reads that "def at superior court per OPD jail, case reset" [docket from Olympia Muni Ct			

Nov 16	George Steele visits DA at the jail in booth 17 from 10:09 – 10:15 am [Reviewed jail logs in person on 3/13/08]	#CR0197482, City v. Trevor Bowman]	Cancelled: Plaintiff/pros requested State's list of witnesses Notice of Hearing Pretrial / Bail Review [court docket from 11/16/06]	
Nov 17		Trevor Bowman had a video hearing; docket refers to "def not eligible for court appt'd counsel." No reference to defense attny present, hearing set for 12/4/06. [docket from Olympia Muni Ct #CR0197482, City v. Trevor Bowman]		DA writes letter dated 11/17 to George Steele w/ documents, making reference to not wanting documents to be viewed by other inmates because they could harm him due to his sex offense charge. Notes to lawyer say "there is not a question in my mind you are a great attorney and would have been a also great soldier but like you said anything can happen. So just know if you get a deal sometime between now and trial and you feel its

KS

<p>in my best interest to take it, I will. If not than just as my soldiers followed me into battle I'll follow you to trial...hope that cough goes away." [Attorney Steele's file, "2nd set of materials" file, page 31 of 52 pages]</p>					
			<p>Letter sent to George Steele re: optional plea agreement; faxed at 2:07pm w/ note of "a hard copy will be mailed to you." [Attorney Steele's file, "1st set of materials" file, letter from prosecutor Skinder dated 11/17/06]</p>		
	<p>DA seen by medical; DA complains that medications are still not working; reference to adding new meds [DA's med records from jail, progress notes starting on 11/19/06]</p>		<p>Steele is his attorney on his divorce case; there was a motion hearing on this date and a review hearing scheduled for 11/22 [docket from Thurston Sup Ct, 06-3-00307-2, divorce case]</p>	<p>George Steele visits Charles Jalek in booth 17 from 13:43-13:43 (1:43pm) [Reviewed jail logs in person on 3/13/08]</p>	
				<p>George Steele visits Trevor Bowman in booth 4 from 1526-1540 (3:26-</p>	<p>Nov 20</p>
					<p>Nov 21</p>

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Nov 22	3:40pm) [Reviewed jail logs in person on 3/13/08] Private Investigator John Wilson visits two inmates, Alden Yale and Daniel Aguirre from 9:49 – 11:06am (total time for both visits) [Reviewed jail logs in person on 3/13/08]			Notice of hearing Review release conditions 1:30pm Hearing continued: Calendar conflict Review release conditions Hearing Cancelled: court's request [court docket from 11/22/06]	1:50pm DA is seen by medical, starting on new medication [DA's medical records from jail, progress notes starting on 11/19/06]	
Nov 28	George Steele visits Trevor Bowman from 1607-1626 (4:07-4:26pm) [Reviewed jail logs in person on 3/13/08]					
Nov 29	George Steele visits Trevor Bowman in booth 18 from 1303-1415 (1:03 – 2:15pm) [Reviewed jail logs in person on 3/13/08]					
Nov 30	Private Investigator John Wilson visits DA from 10:57-11:25am [Reviewed jail logs in person on 3/13/08] George Steele attends court at the jail "video" from 1451-1508 (2:51-3:08pm) [Reviewed jail logs in person on			Hearing continued: stipulated [court docket from 11/30/06]		

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	3/13/08 George Steele visits DA in booth 6 from 1530-1537 (3:30-3:37pm) [Reviewed jail logs in person on 3/13/08]				
		Deadline expires at 5:00 pm for plea agreement, if not accepted in writing beforehand. [Attorney Steele's file, "1 st set of materials" file, letter from prosecutor Skinder dated 11/17/06]			

Information about the jail visits

The professional visit logs are maintained by the jail staff. They are the only ones that write down information in the logs. They write down the time as well, not the person entering or exiting.

The logs are "view only" documents and they would not let me photograph the logs. In order to get copies, they would have to be subpoena'ed.

The jail has a video courtroom attached where you would have to pass through the jail to enter court. On Nov 30th the entry in the log book simply referred to "video." This would have been Steele attending court. It does not refer to which client he might have seen, but since there was something scheduled for DA on that date, it would make sense that this was for DA's case.

There are three professional visiting booths, which are #16, 17 and 18. Attorneys would have to call ahead in order to secure a time in the booths. The front desk at the jail keeps a separate note pad/calendar which they write down appointments for attnys. The visits above were then likely arranged ahead of time.

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The other remaining visiting booths are through glass, where you talk on the telephone. There are 15 booths. These are where social visitors can see inmates or attorneys who haven't arranged for an in-person room (#16-18). When I was at the jail looking at the log books, there were about 4 or 5 attorneys who came in and out and asked to set up a time for a room visit. This is obviously the preference for most attorneys (who are punctual and well-planned). There is no privacy in the social booths (1-15).

This is important when you see that throughout the entire period from Nov 17-30th, when Steele would have had to meet with DA to discuss the plea agreement, that he only met with him one time, on the late afternoon of the 30th. He was in "video" court for 17 minutes and then did a visit in booth #6 for 7 minutes. Again, this booth is not a professional visit booth, and so we can assume that he did not arrange to set up a visit ahead of time, that it was likely a last minute thing. He has in the past set up visits in the professional rooms, so you can assume that he would have used this practice in the past.

Also, the wording of the letter from the prosecutor, was that the prosecutor needed to have something in writing prior to 5:00pm on Nov 30th or the offer would expire. Since Steele left the jail after visiting w/ DA at 3:37pm, that does not leave a lot of time to draft something in writing and get it to the prosecutor by 5:00pm.

The other note of interest was that Steele made multiple trips to the jail during the Nov 17-30 period, to visit with other clients, but did not see DA until the end of the day on the 30th.

APPENDIX

H

1

2 In re: AR 635-200, 14-12c

3

4

5 UNITED STATES,)

)

6 Petitioner,)

)

7 vs.)

)

8 DANIEL MARSHALL AGUIRRE,)

)

9 Respondent.)

10

11

HEARING

12

heard before

13

SEPARATION BOARD

14

15

16

17

August 29, 2007

18

19

20

21

22

23

DATE TRANSCRIBED: February 22, 2008

24

TRANSCRIBED BY: Phillip Puzio, CET

25

Court-Certified Transcriptionist

1 SERGEANT CHRISTENSEN: No problem, sir.

2 CAPTAIN BALFANZ: Sir, unless the Government
3 objects, we would call our second witness now. Just
4 going to do things, you know, vice versa. I don't think
5 he's expecting the call until a little bit later, but I
6 can try now.

7 CAPTAIN HOOK: Sergeant (inaudible) spoke to
8 Ms. McLaughlin (phonetic), said she is available. But I
9 don't have an objection to him continuing, if he --

10 LIEUTENANT COLONEL CLARK: Well, if she's
11 ready, let's get her on the phone.

12 CAPTAIN HOOK: Okay.

13 (Government witness is called.)

14 MS. MCLAUGHLIN: Hello?

15 CAPTAIN HOOK: Is this Ms. Emily McLaughlin?

16 MS. MCLAUGHLIN: Yes, ma'am.

17 CAPTAIN HOOK: Okay. This is Captain Hook from
18 the Government. You're talking on the speakerphone
19 before the Board.

20 MS. MCLAUGHLIN: Okay.

21 CAPTAIN HOOK: (Inaudible).

22 MS. MCLAUGHLIN: All right.

23 CAPTAIN HOOK: Excuse me.

24 MS. MCLAUGHLIN: I'm sorry. I can't hear you.

25 CAPTAIN HOOK: The Board members consist of

1 Sergeant Major Calderon, Lieutenant Colonel Clark, and
2 CW3 Manning. And defense counsel is here, Captain
3 Balfanz. And on the phone is Sergeant Aguirre on a
4 separate phone.

5 MS. MCLAUGHLIN: Okay.

6 CAPTAIN HOOK: (Inaudible).

7 LIEUTENANT COLONEL CLARK: Swear them in.

8 CAPTAIN HOOK: Oh, they need to be sworn in.

9 First you need to be sworn in and then I'll (inaudible).
10 You may stand and raise your right hand.

11 And do you swear that the evidence that you
12 shall give in the case now hearing shall be the truth,
13 the whole truth, and nothing but the truth?

14 MS. MCLAUGHLIN: Yes, ma'am.

15 CAPTAIN HOOK: Okay. Please introduce
16 yourself. Your full name.

17 MS. MCLAUGHLIN: Emily (inaudible) McLaughlin.

18 CAPTAIN HOOK: And were you ever in the United
19 States Army?

20 MS. MCLAUGHLIN: What's that?

21 CAPTAIN HOOK: Were you ever in the Army?

22 MS. MCLAUGHLIN: Yes, ma'am.

23 CAPTAIN HOOK: What rank did you attain?

24 MS. MCLAUGHLIN: What rank?

25 CAPTAIN HOOK: Yes.

1 MS. MCLAUGHLIN: Sergeant.

2 CAPTAIN HOOK: And when did you leave the Army?

3 MS. MCLAUGHLIN: July of '07.

4 CAPTAIN HOOK: How did you first meet Staff
5 Sergeant Aguirre?

6 MS. MCLAUGHLIN: He was my instructor WLC.

7 CAPTAIN HOOK: And what was your relationship
8 like while you were in WLC?

9 MS. MCLAUGHLIN: He was my instructor and I was
10 his student.

11 CAPTAIN HOOK: Did your relationship ever
12 change?

13 MS. MCLAUGHLIN: Yeah.

14 CAPTAIN HOOK: When did it change?

15 MS. MCLAUGHLIN: Once we -- once I graduated.

16 CAPTAIN HOOK: Now, is it a few weeks after you
17 graduated, or right after you graduated?

18 MS. MCLAUGHLIN: At the time I graduated.

19 CAPTAIN HOOK: And how long -- what did -- how
20 did the relationship change?

21 MS. MCLAUGHLIN: We became intimate.

22 CAPTAIN HOOK: So you were dating?

23 MS. MCLAUGHLIN: Yeah.

24 CAPTAIN HOOK: How long were you dating?

25 MS. MCLAUGHLIN: Three months.

1 CAPTAIN HOOK: And what was your relationship
2 like?

3 MS. MCLAUGHLIN: It was -- it was, like,
4 boyfriend-girlfriend. I don't know. It was -- I
5 thought it was all right. I thought it was good until
6 the end.

7 CAPTAIN HOOK: So it was positive for a while?

8 MS. MCLAUGHLIN: Yeah.

9 CAPTAIN HOOK: When did it turn bad?

10 MS. MCLAUGHLIN: About maybe two weeks before
11 the incident happened.

12 CAPTAIN HOOK: What happened?

13 MS. MCLAUGHLIN: He wouldn't let me hang out
14 with my friends. Or if I wanted to go out, he always
15 got mad at me, was very aggressive.

16 CAPTAIN HOOK: And then are you referring to
17 what happened on the 26th and 27th of August of 2006?

18 MS. MCLAUGHLIN: Yes, ma'am.

19 CAPTAIN HOOK: Could you describe what was
20 going on that day?

21 MS. LAUGHLIN: He invited me over to his house
22 for a get-together or something. He had been drinking
23 all day at his friend's house or whatever and told me to
24 go over there and meet him there. So I came over and
25 met him there. And he had come back and he was already

1 drunk and was explaining that he had been in an argument
2 and got in a fight (inaudible) at a gas station. And
3 we -- I didn't want to hear it or whatever. And I tried
4 to leave and he would tell me to sit down and I didn't
5 pay attention to him.

6 And then he told me that I needed to listen to
7 him and I wasn't allowed to leave. And --

8 CAPTAIN HOOK: Why didn't you just leave
9 anyway?

10 MS. MCLAUGHLIN: What's that?

11 CAPTAIN HOOK: Why did you not just leave
12 anyway?

13 MS. MCLAUGHLIN: Well, I couldn't find my keys
14 at the time. I had looked for them throughout the night
15 and I couldn't them. But I didn't feel very comfortable
16 that evening.

17 CAPTAIN HOOK: Was anyone else there?

18 MS. MCLAUGHLIN: His roommate. And there was
19 another individual, but I don't know who it was.

20 CAPTAIN HOOK: And so he proceeded to tell you
21 this story of this fight that he was in?

22 MS. MCLAUGHLIN: Yeah.

23 CAPTAIN HOOK: And what happened from what your
24 knowledge is of the fight?

25 MS. MCLAUGHLIN: I just know that -- because he

1 was saying about how he had went into a gas station and
2 his music was too loud and the people told him to turn
3 it down and he didn't want to. And he said how he
4 punched somebody, had a, like, bloody nose or something.
5 And then they left there and came back to his residence.

6 CAPTAIN BALFANZ: Sir, could we just object at
7 this point? I think it's appropriate -- I understand
8 the rules of evidence don't apply, but I think it's
9 appropriate that she testify to what she knows rather
10 than what someone told her (inaudible). If she could
11 just explain what happened to her.

12 CAPTAIN HOOK: This comes from why she was
13 wanting to leave in the first place and why she would
14 feel uncomfortable.

15 CAPTAIN BALFANZ: I mean, I'm not -- my
16 objection is based on hearsay and reliability
17 (inaudible).

18 LIEUTENANT COLONEL CLARK: If she answers a
19 question she knows about.

20 CAPTAIN HOOK: What happened next after you
21 listened to this story?

22 MS. MCLAUGHLIN: I'm sorry. What?

23 CAPTAIN HOOK: What happened next after you
24 listened to the story?

25 MS. MCLAUGHLIN: I'm sorry. I can't hear you.

1 CAPTAIN HOOK: What happened next after you
2 listened to the story?

3 MS. MCLAUGHLIN: Oh, he came back to the house
4 and -- I'm sorry. I'm having a very hard time hearing
5 you.

6 CAPTAIN HOOK: Okay. You were saying that you
7 wanted to leave after he was telling this story about a
8 fight?

9 MS. MCLAUGHLIN: Oh, yes, yes, yes. And then I
10 wasn't able to leave because I couldn't find my keys.
11 And then he went on about how I needed to defend myself.
12 And that I needed to stick up for myself. And he
13 proceeded to throw me against the wall, throw me on the
14 ground, and hold me down and told me I needed to defend
15 myself. And he began choking with my hand and -- to the
16 point where I couldn't breathe anymore. And --

17 CAPTAIN HOOK: Did you want to learn
18 self-defense tactics at that moment?

19 MS. MCLAUGHLIN: No. And I told him to get off
20 me and I didn't want nothing to do with it. I told
21 him -- kept telling him to stop and he wouldn't.

22 CAPTAIN HOOK: What happened next?

23 MS. MCLAUGHLIN: He left my hand, got off me,
24 and I had ran into the bathroom and cried. And he then
25 came in and told me that I shouldn't cry because I was

1 (inaudible) and I should just deal with it. And I left
2 the bathroom and went into the house.

3 I went looking for my keys again and I couldn't
4 find them. So I sat down on the couch. And he
5 explained to me that I wasn't a real soldier because I
6 had never been to Iraq. And that he had killed more
7 Iraqis than I would ever see. And then he got his
8 combat knife and ran it down my cheek and across my
9 throat and explained that I was weak and I was
10 (inaudible).

11 And then he told me he was on some medication
12 for anger management and that he had stopped taking it
13 because he didn't want to be that out of control and he
14 didn't need anything else. So therefore, I wasn't
15 allowed to leave him or anything.

16 CAPTAIN HOOK: What kind of knife was this?

17 MS. MCLAUGHLIN: I'm sorry. What?

18 CAPTAIN HOOK: What kind of knife was he
19 carrying?

20 MS. MCLAUGHLIN: It's his combat knife.

21 CAPTAIN HOOK: How big was it?

22 MS. MCLAUGHLIN: Probably about 12 inches. 10
23 to 12 inches. I'm not quite sure.

24 CAPTAIN HOOK: Could you describe it for us?

25 MS. MCLAUGHLIN: It was -- I don't really know.

1 It had, like, the jagged edge blade on it. There was
2 still, like blood on it, I guess. I don't know what
3 that was about.

4 CAPTAIN HOOK: Did you think he was serious
5 when he was putting the knife to your face?

6 MS. MCLAUGHLIN: Yes, ma'am.

7 CAPTAIN HOOK: What happened next?

8 MS. MCLAUGHLIN: I went outside and I was going
9 to walk away, but I didn't have my keys. So I couldn't
10 even go to my house or anything. So I came back and I
11 sat down on the couch and -- this is late at night. So
12 then I was going to just fall asleep on the couch or
13 whatever, but he grabbed me and told me to come into his
14 room and --

15 CAPTAIN HOOK: What happened in his room?

16 MS. MCLAUGHLIN: He threw me on the bed and
17 proceeded to take off my pants and raped me. The whole
18 time I kept trying to fight him, but he weighs a lot
19 more than I did.

20 CAPTAIN HOOK: How big are you?

21 MS. MCLAUGHLIN: I was 140 pounds.

22 CAPTAIN HOOK: And about how big is Sergeant
23 Aguirre?

24 MS. MCLAUGHLIN: Probably 210, 220.

25 CAPTAIN HOOK: Now, did you tell him to stop?

1 MS. MCLAUGHLIN: Numerous times.

2 CAPTAIN HOOK: Did you try to fight against
3 him?

4 MS. MCLAUGHLIN: What's that?

5 CAPTAIN HOOK: Did you try to fight him?

6 MS. MCLAUGHLIN: Yes. But I couldn't do very
7 much because he was -- had me held down.

8 CAPTAIN HOOK: What happened after that?

9 MS. MCLAUGHLIN: He had passed out and I had
10 left and went out to the living room. And I had found
11 my keys, like, underneath the couch or something. And
12 then I had gone home.

13 CAPTAIN HOOK: Did you report this to the
14 police?

15 MS. MCLAUGHLIN: Yes, ma'am.

16 CAPTAIN HOOK: When did you report it?

17 MS. MCLAUGHLIN: The following day or the day
18 after. I had gone home and took a shower and went to
19 sleep. And then the next day I had gotten up and I was
20 so sore and I had bruises all over me. And I had went
21 to work and I had told my friend what happened. And
22 they told me that I needed to tell somebody else about
23 it.

24 CAPTAIN HOOK: What happened after you told the
25 police?

1 MS. MCLAUGHLIN: I went to the hospital. And I
2 had bruised ribs. And they took pictures and
3 everything.

4 CAPTAIN HOOK: Did you have a rape exam?

5 MS. MCLAUGHLIN: Yes, ma'am.

6 CAPTAIN HOOK: Did you talk to CID or civilian
7 authorities?

8 MS. MCLAUGHLIN: Civilian.

9 CAPTAIN HOOK: Did you testify at the trial?

10 MS. MCLAUGHLIN: Yes, ma'am.

11 CAPTAIN HOOK: How long did you testify in
12 court?

13 MS. MCLAUGHLIN: Maybe about two hours. An
14 hour, two hours. I don't really remember.

15 CAPTAIN HOOK: Could you describe what that
16 experience was like?

17 MS. MCLAUGHLIN: I'm sorry. What?

18 CAPTAIN HOOK: Could you describe what that
19 experience was like?

20 MS. MCLAUGHLIN: What the experience was at the
21 court?

22 CAPTAIN HOOK: Yes.

23 MS. MCLAUGHLIN: It was very scary because that
24 was the first time I had seen him in months --

25 CAPTAIN HOOK: Stop for just a minute. What?

1 MS. MCLAUGHLIN: Okay.

2 CAPTAIN HOOK: Were you there on the day the
3 verdict was read in court?

4 MS. MCLAUGHLIN: I'm sorry. What?

5 CAPTAIN HOOK: Were you there when the verdict
6 was read in court?

7 MS. MCLAUGHLIN: I'm sorry. I still couldn't
8 hear you.

9 CAPTAIN HOOK: Do you have anything else you
10 would like to say about --

11 MS. MCLAUGHLIN: I don't --

12 CAPTAIN HOOK: Okay.

13 MS. MCLAUGHLIN: I don't like talking about it.

14 CAPTAIN HOOK: Okay. I'm going to stop asking
15 you questions right now.

16 MS. MCLAUGHLIN: Okay.

17 CAPTAIN HOOK: But defense counsel is going to
18 ask you some questions and then the president of the
19 Board might have questions for you.

20 MS. MCLAUGHLIN: Okay.

21 CAPTAIN HOOK: Okay?

22 MS. MCLAUGHLIN: All right.

23 CAPTAIN BALFANZ: Ms. McLaughlin, can you hear
24 me?

25 MS. MCLAUGHLIN: Yes, I can, sir.

1 CAPTAIN BALFANZ: I have a few questions for
2 you. You say that you were in the Army, correct?

3 MS. MCLAUGHLIN: Yes, sir.

4 CAPTAIN BALFANZ: And you were discharged in
5 July of 2007?

6 MS. MCLAUGHLIN: Yes, sir.

7 CAPTAIN BALFANZ: You held the rank of E5?

8 MS. MCLAUGHLIN: Yes, sir.

9 CAPTAIN BALFANZ: And you are a former military
10 police officer?

11 MS. MCLAUGHLIN: Yes, sir.

12 CAPTAIN BALFANZ: And your MOS was a 95
13 Charlie?

14 MS. MCLAUGHLIN: Yes, sir. Turned into a 31
15 Echo.

16 CAPTAIN BALFANZ: I'm sorry?

17 MS. MCLAUGHLIN: It was a 31 Echo.

18 CAPTAIN BALFANZ: 31 Echo? That's a
19 corrections officer, is it not?

20 MS. MCLAUGHLIN: Yes, sir.

21 CAPTAIN BALFANZ: And you had training in
22 combatives?

23 MS. MCLAUGHLIN: Yes, sir.

24 CAPTAIN BALFANZ: Training in self-defense?

25 MS. MCLAUGHLIN: Yes, sir.

1 CAPTAIN BALFANZ: You knew how to handle
2 prisoners being a corrections officer?

3 MS. MCLAUGHLIN: Yes, sir.

4 CAPTAIN BALFANZ: How to defend yourself?

5 MS. MCLAUGHLIN: Pretty much, sir.

6 CAPTAIN BALFANZ: How to disarm the opponent?

7 MS. MCLAUGHLIN: We were taught.

8 CAPTAIN BALFANZ: How to subdue an opponent?

9 MS. MCLAUGHLIN: It's basically just get away.

10 It's not really anything.

11 CAPTAIN BALFANZ: As a corrections officer, you
12 were instructed to get away?

13 MS. MCLAUGHLIN: Yes, sir.

14 CAPTAIN BALFANZ: Were taught how to think on
15 your feet?

16 MS. MCLAUGHLIN: Yes, sir.

17 CAPTAIN BALFANZ: How to be in control?

18 MS. MCLAUGHLIN: Yes, sir.

19 CAPTAIN BALFANZ: How to confront adversity?

20 MS. MCLAUGHLIN: Yes, sir.

21 CAPTAIN BALFANZ: How not to panic?

22 MS. MCLAUGHLIN: Panic.

23 CAPTAIN BALFANZ: In fact, you worked as a
24 guard in the Fort Leavenworth Disciplinary Guards; isn't
25 that correct?

1 MS. MCLAUGHLIN: Yes, sir.

2 CAPTAIN BALFANZ: And the United States
3 Disciplinary Guards handle the most serious military
4 prisoners?

5 MS. MCLAUGHLIN: Yes, sir.

6 CAPTAIN BALFANZ: And all of them have been
7 convicted of a serious felony?

8 MS. MCLAUGHLIN: Yes, sir.

9 CAPTAIN BALFANZ: Sentence of five years and
10 one day or more?

11 MS. MCLAUGHLIN: Yes, sir.

12 CAPTAIN BALFANZ: And is part of your duties to
13 move prisoners around the U.S. disciplinary barracks?

14 MS. MCLAUGHLIN: Yes, sir.

15 CAPTAIN BALFANZ: These prisoners that were
16 convicted of a serious felony?

17 MS. MCLAUGHLIN: Yes, sir.

18 CAPTAIN BALFANZ: You also worked as a guard at
19 Guantanamo Bay, correct?

20 MS. MCLAUGHLIN: Yes, sir.

21 CAPTAIN BALFANZ: And that facility certainly
22 houses serious criminals?

23 MS. MCLAUGHLIN: Yes, sir.

24 CAPTAIN BALFANZ: Alleged terrorists?

25 MS. MCLAUGHLIN: Yes, sir.

1 CAPTAIN BALFANZ: Enemy combatants?

2 MS. MCLAUGHLIN: Yes, sir.

3 CAPTAIN BALFANZ: You even worked as a guard at
4 the Fort Lewis Regional Correctional Facility?

5 MS. MCLAUGHLIN: Yes, sir.

6 CAPTAIN BALFANZ: In fact, you were working as
7 a guard at the time of this incident, correct?

8 MS. MCLAUGHLIN: Yes, sir.

9 CAPTAIN BALFANZ: And that facility also houses
10 soldiers convicted of serious crimes?

11 MS. MCLAUGHLIN: Yes, sir.

12 CAPTAIN BALFANZ: So it's fair to say you know
13 how to deal with stressful situations?

14 MS. MCLAUGHLIN: Most of the time, yes, sir.

15 CAPTAIN BALFANZ: And how to restore order?

16 MS. MCLAUGHLIN: Yes, sir.

17 CAPTAIN BALFANZ: And you --

18 MS. MCLAUGHLIN: There's always more people
19 there to help you. You're not going to be there by
20 yourself. You have other guards to help you.

21 CAPTAIN BALFANZ: Let's go back. Okay. And
22 you learned these techniques because you wanted to be
23 good at your job?

24 MS. MCLAUGHLIN: Correct.

25 CAPTAIN BALFANZ: Is part of being a

1 corrections officer -- there was also an administrative
2 side to your job?

3 MS. MCLAUGHLIN: Yes, sir.

4 CAPTAIN BALFANZ: You have to file all the
5 reports?

6 MS. MCLAUGHLIN: Yes, sir.

7 CAPTAIN BALFANZ: Okay. And you knew how to
8 file reports?

9 MS. MCLAUGHLIN: I'm sorry. What was that?

10 CAPTAIN BALFANZ: You knew how to file the
11 reports?

12 MS. MCLAUGHLIN: Yes, sir.

13 CAPTAIN BALFANZ: You were taught how to file?

14 MS. MCLAUGHLIN: Yes, sir.

15 CAPTAIN BALFANZ: How to make them complete?

16 MS. MCLAUGHLIN: Yes, sir.

17 CAPTAIN BALFANZ: Okay. And you learned how to
18 file these reports because you wanted to be good at your
19 job?

20 MS. MCLAUGHLIN: Correct.

21 CAPTAIN BALFANZ: And you knew about the
22 necessity of filling out an accurate report?

23 MS. MCLAUGHLIN: Yes.

24 CAPTAIN BALFANZ: About the kind of report?

25 MS. MCLAUGHLIN: Yes.

1 CAPTAIN BALFANZ: This incident occurred on the
2 night of the 26th, filed 27 August 2006?

3 MS. MCLAUGHLIN: Okay.

4 CAPTAIN BALFANZ: Is that right?

5 MS. MCLAUGHLIN: I'm pretty sure. I don't
6 really remember. It was, like, 26, 27, 28th. One of
7 those days. I try to forget.

8 CAPTAIN BALFANZ: The following morning after
9 the incident, the 27th of August, 2006, you saw Sergeant
10 Aguirre's roommate in the living room?

11 MS. MCLAUGHLIN: I don't remember.

12 CAPTAIN BALFANZ: Is Staff Sergeant Shane
13 Miyazano his roommate?

14 MS. MCLAUGHLIN: Yes.

15 CAPTAIN BALFANZ: And you don't remember
16 sitting on the couch, smoking that morning?

17 MS. MCLAUGHLIN: No. Because he wouldn't let
18 us smoke in the house.

19 CAPTAIN BALFANZ: So you weren't smoking that
20 morning?

21 MS. MCLAUGHLIN: No. He wouldn't let us smoke
22 in the house. After the incident happened, I left.

23 CAPTAIN BALFANZ: You don't recall ever seeing
24 Staff Sergeant Miyazano that morning?

25 MS. MCLAUGHLIN: No, I don't.

1 CAPTAIN BALFANZ: Did you see him the night
2 before?

3 MS. MCLAUGHLIN: Yes.

4 CAPTAIN BALFANZ: When?

5 MS. MCLAUGHLIN: When the incident occurred.

6 CAPTAIN BALFANZ: He was present when the
7 incident was occurring?

8 MS. MCLAUGHLIN: Yes.

9 CAPTAIN BALFANZ: And what did he do?

10 MS. MCLAUGHLIN: Nothing.

11 CAPTAIN BALFANZ: Did he testify at the trial?

12 MS. MCLAUGHLIN: Yes.

13 CAPTAIN BALFANZ: What did he say he saw?

14 MS. MCLAUGHLIN: I don't know. I wasn't in
15 there.

16 CAPTAIN BALFANZ: Do you know what he said he
17 heard?

18 MS. MCLAUGHLIN: No.

19 CAPTAIN BALFANZ: The morning of 27 August, you
20 telephoned the police, correct?

21 MS. MCLAUGHLIN: I don't know what day it was.
22 But I know it was Monday morning, I believe.

23 CAPTAIN BALFANZ: You used your cell phone?

24 MS. MCLAUGHLIN: No. I was in my office at
25 work where I dialed.

1 CAPTAIN BALFANZ: You don't remember dialing
2 911 that morning from your cell phone?

3 MS. MCLAUGHLIN: The next night, I think. I
4 don't -- I didn't dial it that morning, no.

5 CAPTAIN BALFANZ: Okay. So obviously then you
6 never hung up with the cell phone. Did you ever run
7 into a police officer that morning?

8 MS. MCLAUGHLIN: Not in the morning, no. But
9 the next night, yeah.

10 CAPTAIN BALFANZ: You don't remember Officer
11 Carter talking to you while you were leaving Staff
12 Sergeant Aguirre's house?

13 MS. MCLAUGHLIN: The next night.

14 CAPTAIN BALFANZ: The next night?

15 MS. MCLAUGHLIN: Yes.

16 CAPTAIN BALFANZ: Why was Officer Carter there?

17 MS. MCLAUGHLIN: Because I had called the
18 police the next night.

19 CAPTAIN BALFANZ: You were at Staff Sergeant
20 Aguirre's house the night following the incident?

21 MS. MCLAUGHLIN: Yes.

22 CAPTAIN BALFANZ: Okay. Where did you sleep
23 that night?

24 MS. MCLAUGHLIN: I didn't.

25 CAPTAIN BALFANZ: You didn't stay at the house?

1 MS. MCLAUGHLIN: No. I went home.

2 CAPTAIN BALFANZ: I'm talking the night after
3 the incident.

4 MS. MCLAUGHLIN: I was in my bed in my house.

5 CAPTAIN BALFANZ: In Lacey, Washington?

6 MS. MCLAUGHLIN: Yes, sir.

7 CAPTAIN BALFANZ: And that's where you called
8 the police from?

9 MS. MCLAUGHLIN: No.

10 CAPTAIN BALFANZ: Okay. I'm confused. You
11 tell me when you called the police and where you were
12 at.

13 MS. MCLAUGHLIN: The night I called the police,
14 I was at Danny's house.

15 CAPTAIN BALFANZ: Okay. Before or after the
16 incident?

17 MS. MCLAUGHLIN: After.

18 CAPTAIN BALFANZ: What time was this?

19 MS. MCLAUGHLIN: Probably sometime in the
20 evening.

21 CAPTAIN BALFANZ: Okay. Who's phone did you
22 use?

23 MS. MCLAUGHLIN: Mine.

24 CAPTAIN BALFANZ: Your cell phone?

25 MS. MCLAUGHLIN: Yes, sir.

1 CAPTAIN BALFANZ: Okay. You did use your cell
2 phone. You did dial 911?

3 MS. MCLAUGHLIN: Yes. The next night.

4 CAPTAIN BALFANZ: All right. Well, the same
5 night, right?

6 MS. MCLAUGHLIN: I'm confused on which date
7 you're talking about.

8 CAPTAIN BALFANZ: I am too. That's why I'm
9 just trying to --

10 MS. MCLAUGHLIN: Because earlier, you
11 said "morning" and I never called in the morning. I
12 called the next night in the evening.

13 CAPTAIN BALFANZ: The incident that you just
14 testified to occurred at night, correct?

15 MS. MCLAUGHLIN: Yes.

16 CAPTAIN BALFANZ: And so how long after the
17 incident did you make the telephone call?

18 MS. MCLAUGHLIN: Probably 24 hours.

19 CAPTAIN BALFANZ: From Sergeant Aguirre's
20 house?

21 MS. MCLAUGHLIN: Yeah.

22 CAPTAIN BALFANZ: You hung up the phone,
23 though, correct, before anyone answered?

24 MS. MCLAUGHLIN: Yes, because he was yelling at
25 me.

1 CAPTAIN BALFANZ: Okay. And so then you
2 decided to leave?

3 MS. MCLAUGHLIN: Yes.

4 CAPTAIN BALFANZ: And you were driving away?

5 MS. MCLAUGHLIN: Well, he had taken my keys
6 from me. That's why I had to call.

7 CAPTAIN BALFANZ: Well, okay. Well, let's --
8 just stay with me. You're driving away?

9 MS. MCLAUGHLIN: Yes.

10 CAPTAIN BALFANZ: Okay. You're in your car
11 driving away, and that's when Officer Carter stopped
12 you?

13 MS. MCLAUGHLIN: Yes.

14 CAPTAIN BALFANZ: And Officer Carter works for
15 the Thurston County Sheriff's Department?

16 MS. MCLAUGHLIN: Yes.

17 CAPTAIN BALFANZ: And he comes up to the car
18 and he smells alcohol?

19 MS. MCLAUGHLIN: I don't know about that one,
20 because I wasn't drinking the next night.

21 CAPTAIN BALFANZ: You weren't drinking the
22 night before?

23 MS. MCLAUGHLIN: The night before I was, yeah.
24 But when she pulled me over, I don't think I was
25 drinking then.

1 CAPTAIN BALFANZ: Okay. Why -- you said it
2 was "she." Why did she pull you over? Why did Officer
3 Carter pull you over?

4 MS. MCLAUGHLIN: I don't know why she did. I
5 don't remember why.

6 CAPTAIN BALFANZ: Did Officer Carter ask you if
7 you had a boyfriend?

8 MS. MCLAUGHLIN: I don't think so. I don't
9 remember.

10 CAPTAIN BALFANZ: Did Officer Carter ask you if
11 you had been in a fight with your boyfriend?

12 MS. MCLAUGHLIN: No. I don't think she ever
13 asked me or anything. But I think I tried telling her
14 that we had gotten into an argument the night before.

15 CAPTAIN BALFANZ: You said that you had argued?

16 MS. MCLAUGHLIN: I'm sorry. What?

17 CAPTAIN BALFANZ: You told Officer Carter that
18 you had an argument with your boyfriend?

19 MS. MCLAUGHLIN: That he had hit me, yes.

20 CAPTAIN BALFANZ: You said that he hit you?

21 MS. MCLAUGHLIN: Well, no. He had put the
22 bruises on me. And I showed her them.

23 CAPTAIN BALFANZ: What did Officer Carter do
24 next?

25 MS. MCLAUGHLIN: She asked me if I wanted to

1 file a report.

2 CAPTAIN BALFANZ: And you said what?

3 MS. MCLAUGHLIN: No. I just wanted to go home.

4 CAPTAIN BALFANZ: So you showed a law
5 enforcement officer bruises reportedly made by Sergeant
6 Aguirre and you're testifying now that that officer just
7 let you go and didn't do anything?

8 MS. MCLAUGHLIN: Yes.

9 CAPTAIN BALFANZ: Okay. You never told Officer
10 Carter that there had been no other altercations,
11 basically, that you just got in a verbal argument?

12 MS. MCLAUGHLIN: I told her kind of what
13 happened. But she just asked me if I wanted to write a
14 report and I said no. I just wanted to go home and just
15 forget everything.

16 CAPTAIN BALFANZ: But what you said is that you
17 had been practicing some battles and basically wrestling
18 with your boyfriend?

19 MS. MCLAUGHLIN: I -- she might have said that
20 and I was like, "Fine, yeah, whatever." I just wanted
21 to go home.

22 CAPTAIN BALFANZ: So you did say that?

23 MS. MCLAUGHLIN: I believe I did.

24 CAPTAIN BALFANZ: And Officer Carter believed
25 you?

1 MS. MCLAUGHLIN: I don't know. I don't know
2 what she thought.

3 CAPTAIN BALFANZ: Did Officer Carter let you
4 go?

5 MS. MCLAUGHLIN: Yes.

6 CAPTAIN BALFANZ: You never told Officer Carter
7 that you had been raped?

8 MS. MCLAUGHLIN: No.

9 CAPTAIN BALFANZ: And in fact, you never
10 informed Officer Carter of any crime?

11 MS. MCLAUGHLIN: I did. But she just asked me
12 if I wanted to file a report and I said no. And she
13 says, well, if I choose to, I can always do it later.

14 CAPTAIN BALFANZ: Which crime was that?

15 MS. MCLAUGHLIN: The one in -- the thing in the
16 kitchen, when he hit me and held me down.

17 CAPTAIN BALFANZ: For being on medication?

18 MS. MCLAUGHLIN: No. In the kitchen when he
19 hit me and when he had me held down.

20 CAPTAIN BALFANZ: Is that when he was
21 supposedly --

22 MS. MCLAUGHLIN: And when he choked me.

23 CAPTAIN BALFANZ: I'm sorry?

24 MS. MCLAUGHLIN: And when he choked me with my
25 hand.

1 CAPTAIN BALFANZ: And he was acquitted of that
2 during trial, right?

3 MS. MCLAUGHLIN: He -- yes. He was acquitted
4 of that.

5 CAPTAIN BALFANZ: You said you met Sergeant
6 Aguirre at the Non-Commissioned Officer Academy?

7 MS. MCLAUGHLIN: Yes, sir.

8 CAPTAIN BALFANZ: And you met him in May, 2006?

9 MS. MCLAUGHLIN: Yes, sir.

10 CAPTAIN BALFANZ: It was during the Warrior
11 Leader Course?

12 MS. MCLAUGHLIN: Yes, sir.

13 CAPTAIN BALFANZ: He was an instructor?

14 MS. MCLAUGHLIN: Yes.

15 CAPTAIN BALFANZ: You were a student?

16 MS. MCLAUGHLIN: Yes.

17 CAPTAIN BALFANZ: And you eventually began
18 dating?

19 MS. MCLAUGHLIN: Yes.

20 CAPTAIN BALFANZ: And you stated that that
21 became intimate?

22 MS. MCLAUGHLIN: Yes.

23 CAPTAIN BALFANZ: The day after graduation?

24 MS. MCLAUGHLIN: The night of graduation.

25 CAPTAIN BALFANZ: Night of graduation it became

1 intimate?

2 MS. MCLAUGHLIN: Yes.

3 CAPTAIN BALFANZ: You stayed in his house
4 occasionally?

5 MS. MCLAUGHLIN: Yes.

6 CAPTAIN BALFANZ: You two became very close?

7 MS. MCLAUGHLIN: Yes.

8 CAPTAIN BALFANZ: You even spoke about
9 marriage?

10 MS. MCLAUGHLIN: Yes.

11 CAPTAIN BALFANZ: You two eventually met
12 someone else, though, didn't you?

13 MS. MCLAUGHLIN: No.

14 CAPTAIN BALFANZ: Did Sergeant Aguirre try to
15 break off the relationship prior to the incident?

16 MS. MCLAUGHLIN: We had to slow down because he
17 was angry with me because he wouldn't let me hang out
18 with my friends. And I didn't want to deal with that.

19 CAPTAIN BALFANZ: Well, he, in fact, wanted to
20 break off the relationship, right?

21 MS. MCLAUGHLIN: We both did.

22 CAPTAIN BALFANZ: And that was, what, about a
23 week before the incident? Two weeks before the
24 incident?

25 MS. MCLAUGHLIN: Something like that.

1 CAPTAIN BALFANZ: You guys -- it was mutual and
2 you guys just agreed to go your separate ways?

3 MS. MCLAUGHLIN: Kind of just remain friends
4 and then see where it went.

5 CAPTAIN BALFANZ: You contacted Sergeant
6 Aguirre after the incident, correct?

7 MS. MCLAUGHLIN: He contacted me.

8 CAPTAIN BALFANZ: You never contacted him?

9 MS. MCLAUGHLIN: No.

10 CAPTAIN BALFANZ: You never texted him?

11 MS. MCLAUGHLIN: I'm sorry. What?

12 CAPTAIN BALFANZ: You never sent him a text
13 message after the incident?

14 MS. MCLAUGHLIN: He sent me them.

15 CAPTAIN BALFANZ: You never --

16 MS. MCLAUGHLIN: I sent -- yeah. I sent him
17 back.

18 CAPTAIN BALFANZ: How many?

19 MS. MCLAUGHLIN: Because he said -- I don't
20 know. He said he was sorry and he didn't mean it and
21 that he had started taking his medicine again, that's
22 why.

23 CAPTAIN BALFANZ: Where did you write your text
24 messages?

25 MS. MCLAUGHLIN: I don't remember.

1 CAPTAIN BALFANZ: Do you remember how many
2 there were?

3 MS. MCLAUGHLIN: No.

4 CAPTAIN BALFANZ: Do you remember when they
5 were?

6 MS. MCLAUGHLIN: I think the next -- the night
7 after it happened.

8 CAPTAIN BALFANZ: The night after it happened?

9 MS. MCLAUGHLIN: Mm-hmm.

10 CAPTAIN BALFANZ: You sent him a text message?

11 MS. MCLAUGHLIN: He sent me a text message,
12 yes. They were, like -- we would text --

13 CAPTAIN BALFANZ: You responded to it?

14 MS. MCLAUGHLIN: Yes.

15 CAPTAIN BALFANZ: You also contacted Sergeant
16 Aguirre's brother Jimmy after the incident, correct?

17 MS. MCLAUGHLIN: No.

18 CAPTAIN BALFANZ: No? You never did?

19 MS. MCLAUGHLIN: No.

20 CAPTAIN BALFANZ: Did you have Jimmy Aguirre as
21 one of your friends on your MySpace page?

22 MS. MCLAUGHLIN: He is not.

23 CAPTAIN BALFANZ: Was he listed on your MySpace
24 page as a friend after --

25 MS. MCLAUGHLIN: No. I don't think so.

1 CAPTAIN BALFANZ: You never contacted Jimmy --

2 MS. MCLAUGHLIN: No.

3 CAPTAIN BALFANZ: -- after the incident?

4 MS. MCLAUGHLIN: No.

5 CAPTAIN BALFANZ: You stated that Sergeant
6 Aguirre was 200 and how many pounds?

7 MS. MCLAUGHLIN: I thought he -- I may have
8 thought he was, like, 210.

9 CAPTAIN BALFANZ: How tall is he?

10 MS. MCLAUGHLIN: 5'9", I think. I don't know.
11 A little bit taller than me.

12 CAPTAIN BALFANZ: So he was 5'9" 210 pounds?

13 MS. MCLAUGHLIN: Mm-hmm, I guess.

14 CAPTAIN BALFANZ: I don't have anymore
15 questions.

16 LIEUTENANT COLONEL CLARK: Do you want to
17 redirect any questions?

18 CAPTAIN HOOK: I don't think so.

19 SERGEANT MAJOR CALDERON: One question. I
20 heard one of you two were taking medication. Who was
21 taking medication the night of the incident? Sergeant
22 McLaughlin, can you hear me?

23 MS. MCLAUGHLIN: How are you?

24 SERGEANT MAJOR CALDERON: Yeah. I'm sorry.
25 This is Sergeant Major Calderon.

1 MS. MCLAUGHLIN: Okay.

2 SERGEANT MAJOR CALDERON: The night of the
3 incident, you mentioned that someone was taking
4 medication. Was it you or Sergeant Aguirre?

5 MS. MCLAUGHLIN: Him.

6 SERGEANT MAJOR CALDERON: Do you know what that
7 medication was?

8 MS. MCLAUGHLIN: All I know is he said he was
9 on anger management pills. I don't know what it was
10 called or what type of prescription it was. I'm not
11 sure.

12 SERGEANT MAJOR CALDERON: And you reside in
13 Lacey, correct?

14 MS. MCLAUGHLIN: I'm sorry. What?

15 SERGEANT MAJOR CALDERON: You live in Lacey?
16 You reside in Lacey?

17 MS. MCLAUGHLIN: I'm sorry. I really can't
18 hear you.

19 SERGEANT MAJOR CALDERON: I said, you resided
20 in Lacey at the time, correct?

21 MS. MCLAUGHLIN: Yes, sir.

22 SERGEANT MAJOR CALDERON: And where did
23 Sergeant Aguirre live?

24 MS. MCLAUGHLIN: In Olympia.

25 SERGEANT MAJOR CALDERON: In Olympia. How far

1 apart were they?

2 MS. MCLAUGHLIN: Probably about five minutes.

3 SERGEANT MAJOR CALDERON: And you also
4 mentioned alcohol. Were you drinking as well as -- were
5 both of you drinking that evening?

6 MS. MCLAUGHLIN: He was already basically drunk
7 by the time he got there. And I had had, like, two
8 beers. Two or three beers.

9 SERGEANT MAJOR CALDERON: So you think he was
10 basically intoxicated, but you were --

11 MS. MCLAUGHLIN: Yes. Because he had told me
12 on the way home from his friend's house, he had gotten
13 pulled over. The cop followed him home because he had
14 been drinking.

15 SERGEANT MAJOR CALDERON: The cop pulled him
16 over and let him go?

17 MS. MCLAUGHLIN: Yeah.

18 SERGEANT MAJOR CALDERON: Okay. All right. I
19 have no other questions.

20 LIEUTENANT COLONEL CLARK: Hey, Ms. McLaughlin,
21 this is Lieutenant Colonel Clark. I'm the president of
22 the Board.

23 MS. MCLAUGHLIN: Yes, sir.

24 LIEUTENANT COLONEL CLARK: Okay. Thank you for
25 taking time to talk to us. We're going to excuse you

1 from the Board right now. Make sure you understand that
2 you cannot discuss your testimony this morning with
3 anyone other than the people who talked to you this
4 morning. You understand that?

5 MS. MCLAUGHLIN: Yes, sir.

6 LIEUTENANT COLONEL CLARK: Okay. If anyone
7 attempts to talk to you about this, you need to
8 immediately call back here and talk to Captain Hook.

9 MS. MCLAUGHLIN: I'm sorry. Who?

10 LIEUTENANT COLONEL CLARK: Captain Hook.

11 MS. MCLAUGHLIN: Okay.

12 LIEUTENANT COLONEL CLARK: All right. Thanks
13 for you time. We appreciate it.

14 MS. MCLAUGHLIN: Thank you.

15 LIEUTENANT COLONEL CLARK: Does the Government
16 have any other witnesses?

17 CAPTAIN HOOK: The Government has nothing
18 further to offer.

19 CAPTAIN BALFANZ: Defense has one more witness.

20 LIEUTENANT COLONEL CLARK: Okay.

21 (Defense witness is called.)

22 WITNESS VOICEMAIL: You've reached Jim and
23 Rose --

24 (Defense witness is called again.)

25 WITNESS VOICEMAIL: You've reached Jim and

APPENDIX I

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

STATE OF WASHINGTON,)
) THURSTON COUNTY
Plaintiff,) No. 06-1-01702-5
))
vs.) COURT OF APPEALS
) No. 36186
DANIEL MARSHALL AGUIRRE,)
))
Defendant.)
))
))
))

VERBATIM REPORT OF PROCEEDINGS
(Jury Trial - Vol. II)

BE IT REMEMBERED that on February 13, 2007,
the above-entitled matter came on for hearing before the
HONORABLE ANNE HIRSCH, Judge of Thurston County Superior
Court.

Reported by: Aurora Shackell, Official Reporter,
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1 Actually, I want to say one other thing:
2 Sometimes behaviors can be misconstrued, and
3 that's probably an additional reason that you
4 should just make sure that you just try to stay
5 stone faced or whatever it is that you need to
6 do, and it might feel a little artificial, but
7 it's important to make sure that things proceed
8 smoothly. Okay. Thank you. Are they ready to
9 come in?

10
11 (The jury entered the courtroom.)

12
13 THE COURT: Mr. Skinder, you may call
14 your first witness.

15 MR. SKINDER: Thank you. The State's
16 first witness would be Emily Laughman.

17
18 EMILY LAUGHMAN,
19 having been duly sworn by the Court, testified
20 as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. SKINDER: Q. Good morning.

25 A. Good morning.

1 Q. Could you please state your name to the jury?

2 A. Emily Laughman.

3 Q. How do you spell your last name?

4 A. L-A-U-G-H-M-A-N.

5 Q. And are you -- tell the jury a little bit about
6 your current occupation.

7 A. Military police. I work inside the regional
8 correctional facility at Fort Lewis,
9 Washington. I'm a guard inside there.

10 Q. And can you tell the jury when you joined the
11 military?

12 A. I joined September 1st of 2001. But I had to
13 wait a year to graduate high school before I
14 could actually leave for basic training.

15 Q. Okay. And so then you went through the basic
16 training. Was the military police always the
17 area of the army you wanted to be in?

18 A. Yes, sir.

19 Q. And approximately how long have you been in the
20 military, then?

21 A. A little over four and a half years.

22 Q. And can you just give the jury a summary of
23 where you've been in those four and a half
24 years and what duties you've had?

25 A. I was in Fort Leavenworth, Kansas. I worked in

1 the United States disciplinary barracks there.
2 I was there for a year and a half. I went down
3 to Guantanamo Bay, Cuba, worked in the
4 detaining camps down there about 15 months.
5 And I got here to Fort Lewis, Washington
6 December of '05.

7 Q. And what rank are you currently in the army?

8 A. A sergeant.

9 Q. And for those people that are non-military,
10 what does being a sergeant mean exactly?

11 A. I'm a team leader. I have a couple soldiers
12 underneath me. It's -- you're in a leadership
13 position.

14 Q. Okay. And when did you make sergeant?

15 A. December of '05.

16 Q. And you've been stationed at Fort Lewis
17 approximately how long?

18 A. A little over a year.

19 Q. And where is home to you?

20 A. Lewisburg, Pennsylvania.

21 Q. Now, did you have the opportunity after you
22 made sergeant to go into the NCO academy?

23 A. Once I got here, I did, yes, sir.

24 Q. What is the NCO academy?

25 A. It just gives you -- it's like a school to help

1 you with your leadership skills and train you
2 to become a better NCO.

3 Q. And NCO stands for?

4 A. Noncommissioned officer.

5 Q. And what type of classes do they give at the
6 academy?

7 A. They teach you to give classes. They teach you
8 to do land nav's so when you're out in the
9 field, you can do all that.

10 Q. Let me stop you. What was that one that you
11 said? You said land nav's?

12 A. Land navigation. When you go out in the field,
13 you can navigate where you're at, help your
14 soldiers figure out where you're going. It
15 gives you qualities to help your soldiers so
16 they become better leaders when they get older.

17 Q. Is that an honor to go to that academy?

18 A. Yes, sir.

19 Q. And you've attended that, you said, when you
20 got to -- once you came to Fort Lewis, you then
21 went into the academy?

22 A. I went in June -- May/June of last year, sir.

23 Q. And do you remember when you graduated from the
24 academy?

25 A. The beginning of June.

1 Q. And was one of your instructors at the academy
2 a Daniel Aguirre?

3 A. Yes, sir.

4 Q. And what -- what class did he teach or what was
5 his area?

6 A. He was our instructor the whole time.

7 Q. The whole time. So he covered all these topics
8 that you've described?

9 A. Yes, sir.

10 Q. And how many students would there be in a class
11 in any -- in your class?

12 A. Probably about 15.

13 Q. And for the academy in general, are there a
14 large number of students going through at any
15 particular time?

16 A. I'm sure there is, but I don't know off the top
17 of my head.

18 Q. But you'd be one of many classes?

19 A. Yes.

20 Q. Can all the juror members hear? Okay. So when
21 you -- can you describe to the jury, while
22 you're going through the academy, what your
23 experience was with Daniel Aguirre?

24 A. He was our instructor. I mean --

25 Q. Was there anything more personal at that time?

1 A. Flirtation.

2 Q. There was flirtation. Was that both ways, one
3 way?

4 A. It was both ways.

5 Q. Did it proceed to anything more than merely
6 flirtation?

7 A. Not during school.

8 Q. And why is that?

9 A. Because we were at school. It wasn't
10 professional at school.

11 MR. STEELE: Your Honor, I can't
12 understand any of the words she's saying at
13 this point.

14 MR. SKINDER: Perhaps you can move the
15 microphone a little bit.

16 THE COURT: Yeah, can you move that
17 microphone just a little closer and speak into
18 it? Mr. Steele, let me know if you can't hear.
19 Okay.

20 MR. SKINDER: Did you need that answer
21 repeated?

22 MR. STEELE: Yes.

23 THE COURT: Why don't you go ahead and
24 ask your question again, and she will repeat
25 her answer.

1 MR. SKINDER: I will.

2 Q. Did the relationship between you and
3 Mr. Aguirre go beyond flirtation while you were
4 in school?

5 A. No.

6 Q. And why not?

7 A. Because we were in school; it just wasn't right
8 during school.

9 Q. At some point, school ended, you said, in early
10 June?

11 A. Yes, sir.

12 Q. And was there any sort of concluding event that
13 ended a class?

14 A. Graduation.

15 Q. And so you graduated from the academy?

16 A. Yes, sir.

17 Q. Was there any sort of celebration after
18 graduation?

19 A. Not with the school, but Danny had a party at
20 his house that night.

21 Q. And you're referring to Mr. Aguirre as Danny?

22 A. Yes, sir.

23 Q. That's how you knew him?

24 A. Yes, sir.

25 Q. In a social context?

1 A. Yes, sir.

2 Q. And so he had a party at his home?

3 A. Yes, sir.

4 Q. Was that the home on Quinalt Loop?

5 A. Yes, sir.

6 Q. And approximately how many students were
7 invited to that party?

8 A. There was probably about five or six other ones
9 invited, sir.

10 Q. And were there -- what was the breakdown
11 between male and female?

12 A. I was the only female.

13 Q. And at that graduation party, did your
14 relationship with Danny change?

15 A. Yes, sir.

16 Q. Can you tell the jury how it changed?

17 A. We ended up getting together that night and
18 started dating.

19 Q. And was that an exclusive dating relationship?

20 A. Yes, sir.

21 Q. And I guess I can only ask the question for
22 you, was that an exclusive dating relationship?

23 A. Yes.

24 Q. And during the -- how would you characterize
25 the early part of that relationship? Was it

1 good, was it bad?

2 A. I thought it was really good.

3 Q. What was good about it?

4 A. We laughed, we talked, we went out and did
5 stuff.

6 Q. And it continued like that for some period of
7 time?

8 A. Yes, sir.

9 Q. Did something -- did something happen that
10 changed that positive quality?

11 A. I don't exactly know when. I just remember
12 certain events.

13 Q. Can you go ahead and tell the jury how and when
14 things changed, if they did?

15 A. Just, there was one night when I was -- after
16 work, I was invited to my co-workers's birthday
17 party, and I invited Danny to go with me, and I
18 was trying to call him after work and he never
19 answered his phone.

20 And so I went over there to the birthday
21 party with all them, and I had left early to go
22 back and see if Danny wanted to go still, and
23 he was mad at me, angry at me because I already
24 went and I didn't go back for him or whatever.
25 And then once I got back, he was just really

1 mad at me and didn't want to talk to me.

2 Q. Did you talk about with him why he was angry?

3 A. He just wouldn't -- he wouldn't talk to me
4 about it.

5 Q. And were there other incidents that were
6 similar to this?

7 A. Just jealousy, if guys would call or something.

8 Q. Is it fair to say, in your career choice, that
9 most of your co-workers are male?

10 A. Yes, sir.

11 Q. When you started dating him, did you keep up
12 your relationships with other people?

13 A. No.

14 Q. Why not?

15 A. Because I just basically hung out with him all
16 the time. I didn't really go out and do
17 anything else.

18 Q. At that time, did you have an apartment during
19 that time period?

20 A. Yes, sir.

21 Q. And did you have a roommate?

22 A. No, sir.

23 Q. Were you staying at your apartment most
24 evenings?

25 A. Most of the time, I was over at Danny's.

1 Q. If I asked you to look at some pictures, would
2 you be able to identify if that was Danny's
3 house?

4 A. (No reponse.)

5 MR. SKINDER: May I approach?

6 THE COURT: Yes.

7 MR. SKINDER: Your Honor, after
8 conversing with Defense, the State will offer
9 Exhibits 9 through 22 as evidence in this case.

10 THE COURT: Mr. Steele.

11 MR. STEELE: No -- I'll stipulate to
12 their admissibility, Your Honor.

13 THE COURT: Thank you. Plaintiffs 9
14 through 22 will be admitted.

15

16 (WHEREUPON Plaintiff's Exhibit 9 through
17 22 were admitted into evidence.)

18

19 MR. SKINDER: Q. And just for the
20 ease of the jury, I'll display these and ask if
21 you can identify them. This is Exhibit Number
22 9. Can you identify that residence?

23 A. That's the front of Danny's house.

24 Q. And Exhibit Number 10?

25 A. That's looking at the front door.

1 Q. So, again, you described that as the
2 entranceway?

3 A. Yes.

4 THE COURT: Can you see?

5 THE WITNESS: Yes, sir.

6 THE COURT: Excuse me, Mr. Skinder.

7 MR. SKINDER: That's Exhibit Number
8 11.

9 A. Living room, yeah.

10 Q. I'll come back to those. So you were spending
11 a considerable amount of time over there. And
12 you said that there was an incident, that there
13 was one or there was more than one incident
14 involving jealousy from the defendant towards
15 you?

16 A. Yes, sir.

17 Q. Was it more than one or one?

18 A. One or two.

19 Q. At this point in the relationship, had there
20 ever been a threat to you by the defendant?

21 A. No.

22 Q. And had he in any way hurt you?

23 A. No.

24 Q. So was there an incident in the middle of
25 August where you tried to move out --

1 A. Yes, sir.

2 Q. And when you say move out, you had some
3 possessions at his residence?

4 A. Yes, sir.

5 MR. STEELE: Objection. Leading.

6 THE COURT: Do you want to rephrase,
7 Mr. Skinder? I didn't hear the question. So
8 the question was that you're objecting to,
9 Mr. Steele?

10 MR. STEELE: I think was words to the
11 effect of you had things -- actually, we could
12 perhaps ask the court reporter to read the
13 question back.

14

15 (Record read.)

16

17 MR. STEELE: Basically, that's a
18 leading question. He's suggesting what the
19 answer should be.

20 THE COURT: I'll sustain the
21 objection. Go ahead. Try to rephrase.

22 MR. SKINDER: Thank you.

23 Q. Did you have possessions at his residence?

24 A. Yes, sir.

25 Q. What possessions did you have?

1 A. My TV and lamp and DVD's and some other stuff.

2 Q. Okay. And what led you to try to get your
3 possessions and leave?

4 A. Because that was the night of the birthday
5 party, and he was angry with me, and I told him
6 I was just going to leave and take all my stuff
7 with me and go home.

8 Q. And were you able to do that?

9 A. I couldn't carry everything by myself, so I had
10 asked some of my friends to come over and help
11 me.

12 Q. And were you able to subsequently leave?

13 A. Eventually, yes, sir.

14 Q. Okay. Is that an incident -- were the police
15 called?

16 A. Yes, sir.

17 Q. And why were the police called?

18 A. Because when my friend showed up, Danny
19 wouldn't let me go in and grab my stuff or
20 wouldn't let them help me, so he had called the
21 police.

22 Q. And, eventually, you were able to?

23 A. They told me I could get my stuff.

24 Q. Now, did you still consider yourself to be in a
25 relationship with the defendant at that time?

1 A. Yes, sir.

2 Q. Did it change in how you would describe it at
3 that time?

4 A. We might have taken like a couple days break,
5 but we were talking again and went back to the
6 same thing.

7 Q. I'm going to ask why -- if you had gotten your
8 possessions and left, why would you try to make
9 things continue?

10 A. Because I still cared about him a lot.

11 Q. Did that incident, did it change at all the way
12 you thought of your relationship?

13 A. A little bit, but not really.

14 Q. How did it -- even if it was a little bit, how
15 did it cause you to look at things differently?

16 A. I really didn't go out at all then. I just
17 stayed with him or I was at home.

18 Q. So you take a couple days off, and then did
19 things resume the same pattern as before, that
20 you would spend most of your time at -- your
21 off time at the defendant's house?

22 A. Yes, sir.

23 Q. I'm leading you up to the night of August 26th.
24 Do you remember that night?

25 A. Yes, sir.

1 Q. Did you have any telephone contact with the
2 defendant that evening?

3 A. Yes, sir.

4 Q. Can you tell the jury about that?

5 A. He said he wanted to have a get-together or
6 whatever, and just to come over to the house
7 and he would be there shortly if he wasn't
8 there already.

9 Q. Did he tell you where he was?

10 A. He said he was at a friend's house.

11 Q. So did you go to the Quinalt residence that
12 we've seen in Exhibit 9?

13 A. Yes, sir.

14 Q. Was the defendant there when you got there?

15 A. No, sir.

16 Q. Was anybody there?

17 A. His roommate.

18 Q. And who is his roommate?

19 A. Shane.

20 Q. Do you know Shane's last name?

21 A. Miyazono.

22 Q. To your knowledge, is Shane in the military as
23 well?

24 A. Yes, sir.

25 Q. Do you know what he does in the military?

1 A. He's also an instructor.

2 Q. At the NCO academy?

3 A. Yes, sir.

4 Q. Were you able to let yourself in the residence,
5 or did he let you in?

6 A. I don't remember. I know he was in there and
7 the door was wide open.

8 Q. So when you saw that Danny was not there, what
9 did you do?

10 A. I got on the computer, or I was watching TV.

11 Q. Were you waiting for him to arrive?

12 A. Yes, sir.

13 Q. Did he arrive at some point?

14 A. Yes, sir.

15 Q. And could you tell the jury -- describe to the
16 jury, when he arrived, what happened.

17 A. He was in a bad mood because he said he had
18 just gotten pulled over and the cop had
19 followed him home, and he had just gotten in a
20 fight at a gas station he was at because
21 somebody was yelling at him because his music
22 was too loud in his vehicle, and he had punched
23 him and just took off and went home.

24 Q. Okay. Now, you said there had been another
25 fight. Is this something that the defendant

1 would tell you about, when he had been in
2 fights?

3 A. I'm sorry, could you repeat the question?

4 Q. Well, you said that you guys talked quite a
5 bit.

6 A. Yes.

7 Q. Did he tell you about if he got into a fight?
8 Was that something out of the ordinary?

9 A. He would lose his temper sometimes.

10 Q. Were you able to -- how would you describe how
11 he appeared in terms of his demeanor? I mean,
12 was he joking? Was he not joking?

13 A. He wasn't joking. He was angry, upset when he
14 came in.

15 Q. Okay. Can you -- what is -- you know,
16 everybody acts a certain way when they're
17 angry. How is the way that he would generally
18 act if he was angry or mad?

19 A. He would -- he would like just keep talking
20 about it and yell about it or whatever.

21 MR. STEELE: Your Honor, again, she's
22 talking very low and not really enunciating her
23 words.

24 THE WITNESS: I apologize.

25 THE COURT: Let's see if we can move

1 the mic a little bit closer to your mouth. Why
2 don't you try that answer again.

3 THE WITNESS: He would just get angry
4 and yell and just keep talking about it.

5 THE COURT: Hang on just a minute.
6 Can you hear all right now, Mr. Steele?

7 MR. STEELE: I can hear that part.

8 THE COURT: Was there anything you
9 needed repeated?

10 MR. STEELE: No.

11 THE COURT: Go ahead.

12 MR. SKINDER: Q. So when he's talking
13 about this fight that he had at the gas
14 station, does he want to engage you in
15 conversation about that?

16 A. I just thought he was talking to the other guy
17 that came in.

18 Q. Okay. Who else came in?

19 A. I never met him before. Danny had said he was
20 a student that had just graduated.

21 Q. Do you recall his name or anything?

22 A. I just remember his name, last name being
23 Johnson. That's what he was introduced to me
24 as.

25 Q. And how did he appear to react to Danny talking

1 about this fight?

2 A. They were just laughing about it.

3 Q. At some point, did the defendant get angry at
4 you?

5 A. Yes, sir.

6 Q. Why would he get angry at you, as far as you
7 can tell?

8 A. Because I was walking away, and I guess he
9 thought he was telling me the story, and I just
10 didn't really want to listen to it.

11 Q. So you walk away. What happens?

12 A. He yelled at me to sit back down because he was
13 talking to me.

14 Q. And so did you?

15 A. Yes, sir.

16 Q. Why did you sit back down?

17 A. Because he yelled at me and told me to.

18 Q. And when you sat back down, what happened next?

19 A. He just kept talking about it.

20 Q. And what was the next thing that happened?

21 A. I don't really remember.

22 Q. At some point, did things become physical
23 between the two of you?

24 A. Yes, sir.

25 Q. Can you tell the jury what happened?

1 A. I don't really remember where it started or how
2 it started, but he was just -- I don't know if
3 I was trying to leave. I don't even remember
4 like how it started, but he just told me I was
5 an MP and I needed to defend myself, and he
6 grabbed ahold of me and threw me against the
7 wall, and I kept telling him to stop and he
8 wouldn't. And he threw me on the ground and
9 took my hair and wrapped it around my neck, and
10 the whole time, I kept trying to just kick him
11 off me or push him off me, and he wouldn't get
12 off me.

13 And I was -- I couldn't breathe, I
14 couldn't see, I couldn't do anything, because
15 he was on top of me. He kept yelling at me the
16 whole time. And then, finally, he got up, and
17 I got up and I ran in the bathroom and I just
18 cried in the bathroom and sat in there and
19 cried.

20 Q. Now, you said that he wrapped your hair around
21 your neck?

22 A. Yes, sir.

23 Q. You have your hair very tightly put to the back
24 of your head?

25 A. Yes, sir.

1 Q. What is the length of your hair when it's not
2 tight to the back of your head?

3 A. It goes down to my waist.

4 Q. Do you remember, was your hair already up that
5 evening?

6 A. It was down.

7 Q. It was down. And you stated that you were
8 having difficulty breathing?

9 A. Yes, sir.

10 Q. Do you know why -- do you have any idea
11 subjectively yourself as to why he stopped?

12 A. I don't know if he realized that I couldn't
13 breathe or if he realized what he was doing or
14 what, but he got off.

15 Q. And you said, at that point, you went into the
16 bathroom?

17 A. Yes, sir.

18 Q. And you said that you were crying at that
19 point?

20 A. Yes, sir.

21 Q. Did you sit there for some time?

22 A. Yes, sir.

23 Q. Do you remember --

24 A. Probably about five minutes.

25 Q. And then what happened next?

1 A. He came in and told me to get out of the
2 bathroom, quit crying.

3 Q. Did you do that?

4 A. I came out of the bathroom and went and sat on
5 the couch.

6 Q. It might be an obvious answer, but I need to
7 ask: Why did you listen to him? Why did you
8 leave the bathroom?

9 A. I don't know. The way he said it, the way he
10 said -- I don't know. I just always listen to
11 him.

12 Q. So when you went -- you said you went out to
13 the living room?

14 A. Yes.

15 Q. And where -- do you remember where you sat?

16 A. On the sofa.

17 Q. And what happened next?

18 A. He -- I guess he was talking to Johnson again,
19 and I don't really remember what they were
20 talking about. I wasn't really listening. But
21 then I remember Danny grabbed his knife and was
22 waving it around at Johnson and told him that
23 he should never break the circle of trust, and
24 then he came at me and sat on my legs and he
25 told me the same thing, that I needed to never

1 break the circle of trust and never leave him.
2 And then he ran the knife down my cheek, down
3 my throat and looked at me and said, "How does
4 it feel to date a psychopath?"

5 Q. Could you repeat that last --

6 A. He said to me, "How does it feel to date a
7 psychopath?" And he explained to me that he
8 had stopped taking his pills and that I was his
9 pill and that as long as he had me, that was
10 fine.

11 Q. What's going through your head at this point?

12 A. I was scared.

13 Q. Had he ever done anything like this before?

14 A. No.

15 Q. Had you known that he was taking some sort of
16 pills?

17 A. I knew he was taking something because he had
18 mentioned it before, for anger.

19 Q. What had he told you about that before?

20 A. He had mentioned, I guess while we were in
21 school actually, that he had gotten in an
22 argument with another student, and they had
23 made him go to counseling or something, and
24 they put him on his prescription pills.

25 Q. That's what he had told you?

1 A. Yes.

2 Q. You didn't have any independent knowledge of
3 that?

4 A. No.

5 Q. And so you said this other individual, Johnson,
6 did he react in any way that you remember?

7 A. No.

8 Q. You don't remember?

9 A. He didn't -- I don't remember him doing
10 anything except for just standing in the
11 background.

12 Q. What did Danny do next?

13 A. He put the knife in my hand and tried to make
14 me put it up to his neck, and I kept yelling at
15 him and telling him I didn't want to do that.
16 And I had let go of the knife and he let go of
17 my hand, and he got up, and then I got up and I
18 ran out -- or I ran into the bathroom, and I
19 started crying again, and then I ran outside
20 and was outside smoking.

21 Q. Had he ever -- was this knife something that he
22 had talked about before with you?

23 A. It was hung on his wall. It was -- he said it
24 was his combat knife from Iraq.

25 Q. Had he ever displayed it in front of you

1 before?

2 A. Not like that.

3 Q. So you go outside, and you said you're smoking
4 a cigarette?

5 A. Yes.

6 Q. Again, what was going through -- what was going
7 through your mind at this point?

8 A. I wanted to leave.

9 Q. And did you leave?

10 A. No.

11 Q. Why not?

12 A. I couldn't find my keys.

13 Q. Was it a matter that you misplaced your keys?

14 A. I just didn't know where they were. I don't
15 know.

16 Q. Has the defendant at any point in your
17 relationship taken your keys?

18 A. No.

19 Q. No?

20 A. No.

21 Q. So you couldn't find your keys. And you're
22 outside?

23 A. Yes.

24 Q. What happens next?

25 A. He yelled at me to come back inside.

1 Q. And did you?

2 A. Yes.

3 Q. Why would you go back inside at that point?

4 A. I don't know.

5 Q. Did you think -- go ahead.

6 A. I didn't have my keys to leave. I just didn't
7 have anywhere to go at the time.

8 Q. Did you think about not going back in?

9 A. Yes.

10 Q. But you ultimately did go back in?

11 A. Yes.

12 Q. Where did you go when you went back in the
13 house?

14 A. I went back into the living room and sat on the
15 couch.

16 Q. And what was, again, going through your mind at
17 that time? What were you hoping would happen?

18 A. That, eventually, I could find my keys and just
19 go home.

20 Q. What do you remember happening next?

21 A. He said he wanted to go to sleep, so he told me
22 to go and lay down in bed, and he did, too.
23 And I didn't want to, and I told him I wasn't
24 tired, and I went back and I laid on the bed
25 because he kept telling me to. And I laid

1 there for a couple minutes, and I thought he
2 was maybe passed out or whatever, and then I
3 got up, and he got up and grabbed ahold of me,
4 threw me on the ground.

5 Q. Okay. Let me stop you just for a second there.
6 You said you thought he had passed out.

7 A. Yeah.

8 Q. Why would you think that?

9 A. Because he was drinking.

10 Q. Do you remember what he was drinking?

11 A. Lots of beer and tequila and other stuff.

12 Q. You said that, after you thought he passed out,
13 you tried to get up. What were you attempting
14 to do?

15 A. I was going to just go out and sleep on the
16 couch since I still couldn't find my keys.

17 Q. And you said, when you got up, he then grabbed
18 you?

19 A. Yes.

20 Q. Can you tell the jury what happened next?

21 A. He grabbed ahold and threw me on the ground.
22 And I kept yelling at him, "Stop," and he
23 wouldn't, and he pulled my pants down and held
24 me down, held my arms down and had sex with me.

25 Q. Were you attempting to resist him?

1 A. Yes.

2 Q. How were you trying to resist him?

3 A. I was yelling at him to get off of me. I was
4 trying to kick him off of me. I was trying to
5 squirm out of his grip.

6 Q. At any point, did this stop?

7 A. When he was done.

8 Q. When you said that he had -- I forget exactly
9 the exact word that you used, but you said he
10 had sex with you?

11 A. Yes.

12 Q. I need to ask you, legally speaking, what
13 physically happened. Can you clinically state
14 what happened?

15 A. (No response.)

16 Q. Am I not being clear? What body part of his
17 was used and what body part of yours was used?

18 A. He stuck his penis inside me.

19 Q. You said that when he got done, it stopped. Do
20 you remember what happened at that point?

21 A. He got off of me and laid back down on the bed.

22 Q. What did you do?

23 A. I got dressed, and I walked -- was going to
24 walk out, and he told me to lay down on the
25 bed, so I laid down on the bed, and then when I

1 thought he was sleeping again, I got back up
2 and walked out on the couch, and I sat on the
3 couch, and I smoked a cigarette. And Johnson
4 was still out there. And Danny had came back
5 out and saw that we were smoking and yelled at
6 us, and then Johnson left.

7 Q. And did you stay there, or did you leave at
8 that point?

9 A. I stayed there.

10 Q. Where did you stay?

11 A. I slept on the couch.

12 Q. At some point, did you find your keys?

13 A. When I woke up the next morning.

14 Q. And did you leave at that point?

15 A. Yes.

16 Q. Now, you have training as a military police
17 person, correct?

18 A. Yes, sir.

19 Q. Did you give any thought at that point to
20 calling upon a supervising officer or 9-1-1 to
21 report what had happened?

22 A. Not at that point.

23 Q. Why not?

24 A. Because I just wanted to forget about it. And
25 I don't know. I just wanted to go home and

1 take a shower and go to sleep.

2 Q. And so this would have been August 27th?

3 A. Yes, sir.

4 Q. Did Danny make contact with you that day?

5 A. Yes, sir.

6 Q. How did that happen? Do you remember?

7 A. I don't remember if it was phone calls. I know
8 I talked to him and text messaging. He asked
9 me to come over, and I told him I didn't want
10 to because I was scared of him or whatever, and
11 he had explained he got his prescription
12 refilled and he wasn't going to be like that
13 anymore.

14 Q. Did you believe that?

15 A. I believed he got his prescription refilled,
16 and I figured if he was on the medication, then
17 that would help him.

18 Q. I'm going to ask another hard question. At
19 that time, how did you feel towards the
20 defendant? What was your emotion towards him?

21 A. I was mad at him. I was angry at him. He kept
22 saying he was sorry, and I told him you know,
23 you scared me. He said he knew that and that's
24 why he got put back on his medication.

25 Q. And so did you agree to see him at some point?

1 A. Yes.

2 Q. That day?

3 A. Yes.

4 Q. The 27th?

5 A. Yes.

6 Q. And did the two of you talk more?

7 A. I went over, and we had gone for a drive, and
8 we talked a little bit.

9 Q. And did you still care about the defendant?

10 A. Yes.

11 Q. Even with all that has happened, is there some
12 feeling that you still have today?

13 A. Maybe a part of me. You can't just stop caring
14 about somebody even though they've done so much
15 stuff to you.

16 Q. So when the two you took this drive, did he
17 continue to apologize and try to explain?

18 A. We had talked about it and said maybe we can
19 work things out.

20 Q. Did another argument happen during this drive?

21 A. Yes. Yes.

22 Q. Can you tell the jury about that?

23 A. We were talking about his birthday, and he had
24 wanted something for his birthday, and I had
25 gone and looked at some things already before

1 and had some paperwork and some receipts and
2 stuff for them. But I had it in the glove
3 compartment or the middle console and it was
4 locked and I didn't want him to get into it to
5 see it, and he kept trying to open it, and I
6 wouldn't let him.

7 Q. And so what happened?

8 A. He was mad at me, so we drove back to his
9 house, and he was still trying to get into it
10 then. And then he finally broke it open and I
11 grabbed a whole bunch of paperwork and had
12 thrown it in the shrubbery next to his house so
13 he wouldn't see it.

14 Q. And what happened next?

15 A. He was mad at me because I had done that, so he
16 said he threw my keys in the bushes, too, and
17 that I needed to go find them.

18 Q. And did you look for your keys?

19 A. Yes.

20 Q. Where did -- where was he when you were
21 looking?

22 A. In the house.

23 Q. So were you able to find your keys?

24 A. No, sir.

25 Q. So what did you do next?

1 A. I had looked continuously in the trees or
2 whatever, and it was starting to get dark, so I
3 was asking him to give me a flashlight at least
4 so I could find them and I could go home, and
5 he wasn't answering the door, he wasn't doing
6 anything. He told me just to go home, and I
7 kept telling him I can't go home, you have my
8 keys, you threw them. So I had ended up
9 started walking down the street, and I just
10 didn't want to leave my car there because I
11 didn't feel safe with having my car there, and
12 so I had gone back, and I was crying and
13 begging him to at least give me a flashlight so
14 I could see so I could go look for my keys.
15 And he was just yelling at me and yelling at
16 me.

17 And so I had called 9-1-1, and I told
18 them that we had gotten in a fight and he had
19 thrown my keys. And he saw that I was on the
20 phone and came out and asked who I was talking
21 to, and I told him to not to worry about it. I
22 told him I just wanted my keys so I could
23 leave, give me a flashlight, and he held the
24 keys up in his hand, and I took them from him,
25 and I just left.

1 Q. On your way back to your apartment, did a law
2 enforcement officer contact you?

3 A. Yes. I was driving down the road, and I seen
4 police officers -- police officers in front of
5 me, and when I drove by, they had turned around
6 and followed me, and I pulled over, and I was
7 talking to them.

8 Q. Did you tell them any -- anything about the
9 assaults or the rape?

10 A. I explained to him that he had -- we had gotten
11 in a fight the night before and he had hit me
12 and stuff, and she asked me if I wanted to
13 take -- if I wanted to take a statement or go
14 down and have pictures taken, and, at that
15 point, I just wanted to go home, and I was
16 like, no, never mind, you know.

17 Q. Why didn't you tell that deputy what happened?

18 A. Because once I told her, she was just really
19 rude, and I didn't feel comfortable talking to
20 her about it. I just wanted to go home and
21 forget it ever happened.

22 Q. And so did -- eventually, did you just leave,
23 finish that conversation with the deputy and
24 leave?

25 A. Yeah, I went home.

1 Q. When you got home, did you have an opportunity
2 to see if you had been injured in any way?

3 A. Yes.

4 Q. How were you physically feeling at that point?

5 A. I was sore. My ribs were really sore, and I
6 had bruises all over me.

7 Q. Was there any other -- any other soreness or
8 anything else that you could pick out?

9 A. (No response.)

10 Q. Just --

11 A. Just all around sore from being bruised. My
12 ribs were sore.

13 Q. And, at that point, did you think you needed to
14 go see a doctor?

15 A. I thought about it. I was going to go to
16 sit-call in the morning to at least have my
17 ribs looked at.

18 Q. What is sit-call?

19 A. It's like going to the doctor's in the morning
20 before work starts.

21 Q. Did you do that?

22 A. I had gone to work the next morning, and I had
23 talked to one of my other NCO's, and it was
24 summer, so we were in shorts and t-shirts, and
25 they seen the bruises all over my arms and on

1 my legs, and I had told them that -- kind of
2 what happened, and I talked to them about it,
3 and they told me I should probably go talk to
4 somebody else about it.

5 Q. Okay. And by somebody else --

6 A. The police.

7 Q. What's that?

8 A. The police.

9 Q. So did you do that?

10 A. Yes.

11 Q. How did you do that?

12 A. I went to the Lacey Police Department, because
13 that was the one near me and that's the one I
14 thought was there, and they had explained to me
15 that that wasn't the right district, that it
16 was Thurston County, so they had a Thurston
17 County sheriff come up, and I spoke to him.

18 Q. And did you tell him what had happened?

19 A. Yes.

20 Q. Did you then go to Madigan Army Medical Center?

21 A. Yes, sir.

22 Q. And did you go through an examination there?

23 A. Yes, sir.

24 Q. Did you leave the Madigan Medical Center at any
25 point?

1 A. Yes, sir.

2 Q. Why did you leave?

3 A. Before I had gone to Madigan, I had gone to the
4 Thurston County place over there to get a
5 restraining order against him.

6 Q. Against Danny?

7 A. Yes.

8 Q. And did they tell you that -- you said before
9 you went to Madigan, you had gone there?

10 A. Yes, and they told me I had to return at 1:30
11 for it to be legalized.

12 Q. And so did you do that?

13 A. Yes.

14 Q. And after obtaining the restraining order, what
15 did you do next?

16 A. I went back to Madigan.

17 Q. And at that point, did they have you seen by an
18 OB-GYN doctor?

19 A. I'm sure they did. There was a whole bunch of
20 people coming in and out.

21 Q. Were you seen by a number of people?

22 A. Yes.

23 Q. Did you tell them, also, what you've told the
24 jury today about what happened to you?

25 A. Yes, sir.

1 Q. Was your supervising -- the people above you,
2 were they supportive of you?

3 A. Yes.

4 MR. STEELE: Objection, relevance.
5 Also calls for hearsay.

6 THE COURT: Just reviewing the
7 question...

8 MR. STEELE: Perhaps we could have a
9 sidebar, Your Honor.

10 THE COURT: Yes, we can have a
11 sidebar. I'm looking at the question. I'll
12 make a ruling on it first. I'm going to
13 sustain the objection. Come on up to sidebar.

14
15 (Off-the-record discussion.)

16
17 MR. SKINDER: Q. Did you have
18 different sleeping arrangements that night?

19 A. Yes, sir.

20 Q. What were they?

21 A. One of the other female NCO's, she had me stay
22 at her house for that week.

23 Q. Is part of your training with the military and
24 specifically with the military police to deal
25 with issues of domestic violence and sexual

1 assault?

2 A. Yes, sir.

3 Q. Were you able to employ that professional
4 training into your personal life?

5 A. It's different when you -- I mean, you can get
6 all the training in the world, but it's going
7 to be different when it's you.

8 Q. Can you explain to the jury why it was
9 different for you?

10 A. I didn't want to believe it, I guess. Because
11 I deal with those people on a daily basis,
12 people, and I just, I didn't -- guess I didn't
13 want to see it.

14 Q. Can you identify the defendant, Danny Aguirre,
15 in court today?

16 A. Yes.

17 Q. Can you point to him?

18 A. (Witness indicated.)

19 Q. Thank you. I'd the ask the record reflect the
20 witness identified the defendant.

21 THE COURT: The record will so
22 reflect.

23 MR. SKINDER: May I approach the
24 witness?

25 Q. I have to ask if you can identify what's been

1 marked as State's Exhibit 40. Can you identify
2 this?

3 A. That's the knife Danny had in his hand.

4 Q. Is there any way, how are you certain of that?

5 A. Because of the handle.

6 Q. Is that an unusual handle?

7 A. Yes.

8 Q. Is that something that he had done?

9 A. I guess so. I don't know.

10 Q. But this is the distinguishing characteristic?

11 A. Yes.

12 Q. I'd move -- I'd offer Exhibit Number 40 as
13 Exhibit 40.

14 MR. STEELE: No objection.

15 THE COURT: Plaintiff's 40 will be
16 admitted.

17

18 (WHEREUPON Plaintiff's Exhibit 40
19 was admitted into evidence.)

20

21 MR. SKINDER: Q. Did you, after --
22 after you concluded at Madigan, did you
23 subsequently have contact with any other law
24 enforcement from Thurston County?

25 A. I had spoke to Detective Stines a few times,

1 but that's about it.

2 Q. Do you remember -- did you -- how was it that
3 you had contact with her?

4 A. I don't remember. I think maybe the detective
5 at the Lacey Police Department had maybe
6 referred me to her. I don't remember how that
7 worked out.

8 Q. And you said you spoke to her on a couple of
9 occasions?

10 A. Yes.

11 MR. SKINDER: I have no further
12 questions at this time. Thank you very much.

13 THE COURT: Thank you. Mr. Steele.

14 MR. STEELE: Your Honor, there is a
15 matter I want to take up outside of the
16 presence of the jury before I begin my
17 cross-examination of this witness. It's also
18 going to be fairly lengthy cross-examination,
19 so I'd ask perhaps if we could excuse the jury
20 and I can take my matter up.

21 THE COURT: Okay. I think what we'll
22 do, then, Mr. Skinder and Mr. Steele is, for
23 purposes of the jury, I'm going to have you be
24 in recess until after the noon hour. We'll
25 take up whatever matters we need to take up

1 outside of the jury's presence, and we'll
2 resume again at 1:30. We won't finish now.
3 Okay.

4 I just want to remind you of my four
5 orders that we talked about yesterday -- or
6 that I talked about yesterday: Please don't
7 discuss this matter, anything about this case
8 amongst yourselves; don't try to find anything
9 out about the case; please come and go directly
10 from the jury room according to the bailiff's
11 instructions; and don't linger about the
12 hallways or speak to people in the courthouse
13 or around here. Thank you. Have a nice lunch.

14
15 (The jury left the courtroom.)

16
17 THE COURT: I'm going to excuse you
18 now, and we're going to take up some matters
19 and we'll see you after lunch.

20
21 (The witness left the courtroom.)

22
23 MR. STEELE: Your Honor, in light of
24 her testimony about her being in an exclusive
25 relationship and what have you, I do want to

1 inquire in what is a second instance of
2 jealousy that she was talking about and also
3 ask if that had anything to do with her seeing
4 a boyfriend.

5 THE COURT: Her what, boyfriend?

6 MR. STEELE: A boyfriend in
7 Pennsylvania during the period of time they
8 were both -- both my client and her were away
9 from Fort Lewis, and see if she would agree to
10 that. As I said before, I don't intend to
11 bring any of this type of stuff up first
12 without asking the Court's permission
13 beforehand, because I don't believe in
14 blind-siding people, but I believe it would be
15 relevant because of the fact she has not stated
16 what the other instance of jealousy would be;
17 and, secondly, I believe that's going to be a
18 point of contention as to other reasons she may
19 be upset with the relationship and what have
20 you. Because if my client chooses to testify,
21 which probably will be, I believe that his
22 version will be that particularly after that,
23 he was telling her that there was not going to
24 be any future between the two of them, which
25 she did not particularly appreciate, she was

1 having a hard time dealing with.

2 So I want to go in that area, but, like
3 I said, I'm not going to blind-side anybody in
4 these areas, so that's why I'm asking the
5 Court's permission to go there. And I'm not
6 sure what her answers to those would be, but I
7 do think I need to at least ask my questions
8 during cross-examination.

9 THE COURT: So there are two points
10 that you're talking about, one is another
11 relationship.

12 MR. STEELE: Correct.

13 THE COURT: And one is -- what was it?

14 MR. STEELE: She mentioned two
15 instances of jealousy, and they may be actually
16 part of the same thing. I don't know the
17 answer to that yet. But I do want to inquire
18 in there. It's not my intent to -- it's not my
19 intent to try to put a scarlet A on her or
20 anything like that, and I'm trying to be very
21 careful about that, because I understand we
22 don't try people by character or anything like
23 that, but I do want to go in there, and I do
24 want obviously to clear that with the Court
25 before I go there.

1 THE COURT: I guess I still don't see
2 what the second point is. You said there were
3 two things.

4 MR. STEELE: The relationship in
5 Pennsylvania. She also indicated that there
6 were one or two instances of jealousy. I
7 intend to ask her about the second, but there's
8 a risk. And that's why I'm bringing this up
9 outside the presence of the jury, and I don't
10 know what her answer is going to be. But
11 there's a risk that that may be talking about,
12 you know, them getting into it over his
13 allegations of her seeing someone else while he
14 was away and while she was away. So I just
15 want to clear -- you know, give the Court a
16 heads up on that.

17 THE COURT: Mr. Skinder.

18 MR. SKINDER: I think if the defendant
19 chooses to testify and wants to explain what
20 these matters of jealousy are, that's fine.

21 The concern I have is that defense wants
22 to get into prior relationships of the victim
23 in this case; however, they're extremely
24 concerned, and they've actually asked the Court
25 to have a preliminary ruling that they not get

1 into his relationship status, which was the
2 fact if anyone would have the scarlet A, it
3 would, in fact, be the defendant. And the
4 State has honored that, because, for the same
5 reason, I don't think there is a tremendous
6 amount of relevance in a prior relationship.

7 Now, if the defendant chooses to take
8 the stand, he certainly would have the ability
9 to give his version of why he was or was not
10 jealous and what that was based on. But I
11 don't think that the defense has satisfied any
12 threshold level of relevance as to why this
13 would be brought into it. And if it was
14 allowed to be brought in, then I think the
15 defendant's relationship status should also be
16 fair game, because, in fact, he misrepresented
17 that status to the victim in this case.

18 THE COURT: Mr. Steele.

19 MR. STEELE: That may be fair game,
20 Your Honor, in this particular case. And just
21 so we're clear for the record, when I use the
22 word "scarlet A," I'm not intending to say
23 that's for females only. I've dealt within my
24 practice many men who would qualify for that
25 badge, I dare say.

1 But the problem is, in this particular
2 case, she is having -- she is basically
3 painting a story here of they were having
4 jealousy issues and that type of thing. She's
5 only given one instance. I want to find out
6 what the second instance was that she was
7 talking about. It may be the Pennsylvania
8 situation, and also, I want to see if she
9 agrees that perhaps one of the problems they
10 were having was the fact that he was telling
11 her, based on that, that they weren't going to
12 be going anywhere as a couple, you know, that
13 this was not going to be any kind of long-term
14 relationship.

15 That's not trying to say, well, you
16 know, she deserved it or whatever. I'm not
17 suggesting that at all. This is really about
18 things that transpired during this alleged
19 relationship that she's already testified
20 about, not trying to find out what she's done
21 in the past or whatever. I don't care what
22 she's done before she and Sergeant Aguirre met.

23 THE COURT: Well, with respect to the
24 testimony that the witness has given about,
25 it's the Court's recollection that she

1 testified to two prior instances of jealousy, I
2 think is the term she used, and she described
3 one. I think it's appropriate on
4 cross-examination that the defendant be allowed
5 to go into that in whatever appropriate way
6 that he wants to. Certainly, there needs to be
7 limits with what you do, Mr. Steele, and I
8 think you are well aware of what the
9 requirements are with respect to what you can
10 inquire as to the witness.

11 With respect to the issue of what the
12 defendant, his story is, he's going to need to
13 testify about that, if that's the information
14 he wants the jury to have. The witness
15 testified as to what her belief was. That's
16 all she's going to have personal knowledge to
17 testify about. So I don't think that you can
18 get in what I think was your second point.

19 MR. STEELE: As concerning any kind of
20 alternate relationship that occurred between
21 her while my client and her were both absent
22 from Fort Lewis. So I understand the Court's
23 ruling, I can ask about the second instance of
24 jealousy?

25 THE COURT: Yes.

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MR. SKINDER: Good afternoon, Your Honor.

THE COURT: Back on the record. The clerk has advised me that counsel have something they want to take up outside the presence of the jury.

MR. SKINDER: I just have a brief issue I wanted to let Court know about as soon as I heard about it. I approached Mr. Steele a little bit ago. We have two medical folk that are going to be testifying this afternoon, Dr. Rhiana Saunders from Madigan Army Medical Center, who is the doctor who actually saw Emily Laughman on the 28th of August. She's a third year doctor in residency there in OB-GYN. And I think at that time, that was only her third sexual assault examination, and so my intent was to have Lori Davis, who is a nurse practitioner at the sexual assault clinic be able to testify.

Part of the reason as well is the military has certain rules on doctors not being able to give basically opinion-type testimony, and Mr. Steele has had a brief opportunity to

1 speak with both medical people, and what I
2 proposed and I did not anticipate this being an
3 issue, there was an objection made to this
4 idea, was that I have Ms. Davis sit in on the
5 testimony, with the Court's permission, of Dr.
6 Saunders. And my reason for this is Ms. Davis
7 has never seen Emily. I think it would mainly
8 just allow -- I think it's pretty commonplace
9 that an expert would be allowed to listen to
10 the testimony of another expert, and I think it
11 would be more efficient to allow her to hear
12 the doctor's testimony.

13 Ms. Davis has reviewed the Madigan
14 medical reports and the pictures in this case,
15 but my proposal was to allow Ms. Davis to sit
16 in as an exception to the Court's rule of
17 exclusion of court's witnesses to hear Dr.
18 Saunders' testimony, and I believe defense was
19 objecting to that procedure, and I want to let
20 the Court be aware, because when we finish with
21 Ms. Laughman this afternoon, I plan on calling
22 those two medical personnel.

23 THE COURT: In that order, Dr.
24 Saunders and then Ms. Davis?

25 MR. SKINDER: Correct.

1 THE COURT: Mr. Steele, go ahead.

2 MR. STEELE: Your Honor, I would
3 object to that. The witnesses are excluded
4 basically so they don't compare notes and
5 adjust to each other's testimony. I'm not
6 telling the Court I believe these specific
7 individuals would; we just make the assumption.
8 We don't want to provide any of the witnesses,
9 no matter who they are, with that opportunity.

10 As I understand it, based on what the
11 prosecutor told me, Ms. Davis is going to
12 testify as to her experience, that she's gone
13 through the records, observed the photos and
14 basically going to offer an opinion that,
15 one -- one would be that the lack of any injury
16 in the vaginal area is not determinative
17 concerning a sexual assault occurring; it's
18 normal for there not to be any injuries in that
19 area, even though a sexual assault has
20 occurred.

21 And I don't intend to object her
22 offering that opinion, and I don't believe she
23 needs to sit and listen to another witness's
24 testimony to be able to formulate that opinion.

25 Secondly, the situation is that she

1 would be offering then an opinion that the
2 bruises and what have you would not be
3 something you would expect during normal sexual
4 activity. And if I mischaracterized what the
5 prosecutor said, if I understood him, what he
6 said, I don't think she needs to sit and listen
7 to the doctor's testimony to formulate that
8 opinion. So I don't believe there's any need
9 to have her sit in, and I don't really
10 particularly want to get into a situation where
11 we're starting to make exceptions to the
12 witness exclusion rule that we have.

13 THE COURT: Mr. Skinder, what exactly
14 was it about Dr. Saunders' testimony that you
15 wanted Ms. Davis to hear? Because the two
16 things that Mr. Steele just mentioned, it
17 doesn't sound like the second witness needs to
18 hear the testimony, that that would be
19 available to her just on the basis of the
20 record she's already reviewed.

21 MR. SKINDER: I anticipate that will
22 probably be correct. My only concern, and I've
23 talked to Mr. Steele about this and I've let
24 the Court know that there are some limitations
25 as to what testimony Dr. Saunders can give, and

1 I guess my concern was, if an area came up that
2 I wanted Ms. Davis's expert opinion on, I
3 thought it would be a much more efficient use
4 and not unusual in the context of experts to
5 have her actually be able to hear the
6 testimony, as opposed to the more laborious
7 process of me repeating testimony from the
8 court reporter to the witness to try to get to
9 the answer that Dr. Saunders was not able to
10 provide.

11 Mr. Steele is correct, my anticipation
12 is just really to have Ms. Davis testify to
13 those two areas, but if something else comes
14 up, I just wanted the opportunity for the
15 expert to be able to hear the testimony. She's
16 basically an expert with more experience than
17 Dr. Saunders in this area, so I just wanted her
18 to have the opportunity to hear that testimony.

19 THE COURT: And, again, it sounds like
20 you're not clear what you might want Ms. Davis
21 to have an opportunity to comment on.

22 MR. SKINDER: At this point, I don't
23 know. But it's been my experience that things
24 will come up in questioning both direct and
25 cross-examination that no matter how well

1 prepared counsel is, sometimes things do come
2 up, and as Ms. Davis never did see the victim
3 in this case, there aren't those concerns that
4 the witness exclusion rule was aimed at, which
5 was the idea of witnesses getting together and
6 comparing stories or innocently talking about
7 stories and filling in each other's gaps.

8 Ms. Davis is not a fact witness. She is
9 solely an expert witness, so there's no risk of
10 contamination. That's the portion that I
11 disagree with the defense on, because she never
12 saw the victim nor has any direct eyewitness
13 testimony to give. There really isn't any risk
14 of contamination, which is I believe what the
15 purpose of the witness exclusionary rule is.

16 THE COURT: Mr. Steele, any comments?

17 MR. STEELE: Well, Your Honor, it also
18 makes an attorney nervous when we're talking
19 about other things may come up and we're
20 talking about opinions. As far as I can tell,
21 based on what's been offered, that she's really
22 playing the limited role, essentially, to be
23 able to give opinion testimony that the
24 physician who performed -- performed the
25 examination is not -- would not be able to give

1 in part because counsel has concerns about her
2 experience at that point, but also because of
3 the military regulations that she's not allowed
4 to be -- give opinions because that would
5 essentially cast her as an expert about it and
6 she's only going to be able to state what she
7 observed.

8 But the point of the matter is, the
9 State's expert witness has had an opportunity
10 to review the medical reports, and,
11 surprisingly, you can actually read them. I
12 mean, it's kind of amazing, actually. You can
13 actually read them. They're very clear, what
14 was observed, what wasn't observed, and there
15 certainly would have been an opportunity if
16 there were further questions, to have the
17 expert interview the doctor or what have you,
18 that performed the examination.

19 But I just think it is bad precedent,
20 even though it's -- you know, expert opinion
21 would be all she would testify to, would be
22 waiving the exclusionary rule, and I'm opposed
23 to it. I don't think it's necessary based upon
24 their offer of proof.

25 Before I sit down, one other thing I do

1 want to mention is I did get a brief chance, as
2 counsel indicated, to speak with the physician.
3 And I had discussed earlier concerning my --
4 what type of foundation would be laid for the
5 patient/physician exception to the hearsay
6 rule. I believe that the State will produce
7 sufficient evidence to show that this was at
8 least in part due to her medical treatment
9 purposes, so I don't believe we need to have a
10 motion outside of the presence of the jury for
11 that. I'm satisfied they're going to be able
12 to make -- they'll still have to make a
13 showing, but because I'm confident they'll be
14 able to make the showing, I don't believe we
15 need to excuse the jurors. I hope it will help
16 speed things along a little bit.

17 THE COURT: In sort of balancing out
18 the slowing down that might occur otherwise.

19 Mr. Skinder, the Court doesn't think at
20 this time, based on your offer of proof, that
21 there's a reason to modify the rule -- or the
22 ruling that the Court made earlier on excluding
23 witnesses. The only concern I have, frankly,
24 is about efficiency of Court's time and
25 resources in getting this matter moving along.

1 But over the defense's objections and given the
2 offer of proof, I'm going to order she be
3 excluded during Dr. Saunders' testimony as are
4 all of the other witnesses.

5 And, Mr. Steele, I think the other point
6 you raised is that you are not objecting at
7 this point based on the foundation being laid
8 by the prosecution as to medical.

9 MR. STEELE: I will expect, I'm sure
10 Mr. Skinder would ask questions but I don't
11 think we'll have to excuse the jury because I'm
12 satisfied they will be able to lay a proper
13 foundation.

14 THE COURT: Mr. Skinder, anything
15 else?

16 MR. SKINDER: Just again for
17 efficiency sake, I can let the Court know we
18 also, I believe, have reached an agreement
19 regarding the excited utterance issue which we
20 told the Court would be an issue. Mr. Steele,
21 please let me know if I misstate. The State is
22 not going to attempt to elicit from the
23 witness, Jeff Wilkinson, specific statements
24 that were provided to him by the victim in the
25 case. However, and I believe defense agrees

1 that this is appropriate, that we will cover
2 the matter of -- what our proposal of the Court
3 is that we would cover the matter of what was
4 stated by the victim to the deputy by simply
5 stating that she then detailed how she was
6 assaulted on two occasions and raped. And so
7 we would have that -- that much go out but not
8 go into specific details of the statements.

9 THE COURT: Mr. Steele.

10 MR. STEELE: As being offered as truth
11 of the matter asserted, we can't predict if
12 everything comes up, but if something does,
13 we'll have to deal with it. At this point, I'm
14 satisfied with that.

15 THE COURT: At the end of the day,
16 we'll do sort of another check in about issues
17 you think might be resolved or not resolved and
18 where you think you're going with the timing,
19 but, at this point, I'll have the jury come in,
20 we'll go to about 3:00ish, a little after 3:00,
21 and we'll take an afternoon recess.

22 MR. SKINDER: Would you like Ms.
23 Laughman to take the stand?

24 THE COURT: Let's have her come on
25 back.

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(Whereupon the jury entered the courtroom.)

THE COURT: I'm going to resume with Mr. Steele's cross-examination of the witness. Go ahead, please, Mr. Steele.

MR. STEELE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. STEELE: Okay. What I want to do is start off with your military career. You testified this morning that you enlisted before you graduated from high school but didn't actually report for basic training until after graduation; is that correct?

A. Yes, sir.

Q. So that -- and then you went into a specialty of being a military police officer?

A. Yes, sir.

Q. And when did you actually elect to take that specialty? When did you decide to go into that specialty?

A. When I signed up in September of '01.

Q. All right. And you have stayed at that

1 specialty throughout your military career thus
2 far?

3 A. Yes, ma'am -- yes, sir.

4 Q. And the situation is, you had to go through
5 training?

6 A. Yes, sir.

7 Q. What type of additional training did you have
8 to go through to become a military police
9 officer?

10 A. We went through unarmed self-defense. We've
11 gone through -- just since we work with
12 inmates, we learn all their mind games and what
13 they do and stuff like that.

14 Q. Okay. How long did that training last?

15 A. Probably about two months.

16 Q. All right. And is physical training a part of
17 that?

18 A. As in what, sir?

19 Q. As in like doing exercises, physical -- is that
20 part of -- been part of your military career
21 throughout?

22 A. Yes, sir.

23 Q. And you indicated you were initially assigned,
24 after becoming a military police officer, at
25 Fort Leavenworth, Kansas?

1 A. Yes, sir.

2 Q. What type of facility is Fort Leavenworth?

3 A. Maximum facility prison for military criminals.

4 Q. Would it be a fair characterization, where the
5 worst of the worst go?

6 A. Yes, sir.

7 Q. And what were your duties there?

8 A. I was a guard there, sir.

9 Q. Is that facility for both men and women, or is
10 it segregated or men only or what?

11 A. Just males, sir.

12 Q. All right. So you've had to deal with some
13 fairly bad characters; isn't that true?

14 A. Yes, sir.

15 Q. How long were you doing that?

16 A. I was in Leavenworth for a year and a half,
17 sir.

18 Q. Did you have interaction with the prisoners?

19 A. Yes, sir.

20 Q. And then after that, you indicated you went to
21 Guantanamo?

22 A. Yes, sir.

23 Q. And you were in the detention center there?

24 A. Yes, sir.

25 Q. Isn't it true you would have dealt with very

1 rough people down there, too? Isn't that
2 correct?

3 A. Yes, sir.

4 Q. You're dealing with U.S. personnel or detainees
5 from the terrorist war?

6 A. All of them, sir.

7 Q. And they weren't particularly nice people,
8 either; isn't that correct?

9 A. Yes, sir.

10 Q. Your duties when you reported to Fort Lewis
11 were to be at the stockade? Is that a correct
12 term, a stockade, or what do you refer to it
13 as?

14 A. Regional correctional facility.

15 Q. Regional correctional facility. All right. So
16 your duty was to be there as a guard there as
17 well?

18 A. Yes, sir.

19 Q. Were you also being promoted to sergeant?

20 A. I got promoted before I came to Fort Lewis,
21 sir.

22 Q. And then you went into the training? Then you
23 went to the NCO academy?

24 A. Yes, sir.

25 Q. You also re-enlisted?

1 A. Yes, sir.

2 Q. Basically, your intentions are that you want at
3 least for awhile and maybe permanently make the
4 military your career?

5 A. At least for awhile, yes, sir.

6 Q. Would it be a correct assumption that you have
7 as part of your training had training on making
8 reports or taking reports from people?

9 A. Yes, sir.

10 Q. And have you had to deal with in your career
11 taking reports from people?

12 A. As in what, sir?

13 Q. Anything, whether it was a crime that occurred
14 inside a facility or disciplinary incident or
15 anything like that.

16 A. As in disciplinary, yes, sir.

17 Q. Okay. Now, you indicated -- you indicated that
18 you first met Mr. Aguirre in the NCO academy?

19 A. Yes.

20 Q. And he was your sole instructor?

21 A. There was two others, sir.

22 Q. Who were the other two?

23 A. Sergeant Taylor and Sergeant Davis.

24 Q. And the situation is, you indicated, if I
25 understand your testimony correctly, that you

1 began to -- while you were in school, you and
2 Sergeant Aguirre would flirt a little bit?

3 A. Yes, sir.

4 Q. But that neither one of you were allowed to go
5 anywhere past that because of the fact he was
6 your instructor and you were a student?

7 A. Yes, sir.

8 Q. And the military would not appreciate that,
9 would they?

10 A. Right, sir.

11 Q. And you indicated the flirtation was both ways?

12 A. Yes, sir.

13 Q. So it was not a situation where he was hitting
14 on you or flirting with you when you were
15 trying to ignore him or anything like that?

16 A. Right, sir.

17 Q. Do you recall whether the flirtation was
18 initiated by one or the other or was it
19 something that just happened mutually?

20 A. I assume it was just something that happened
21 mutually, sir.

22 Q. And how many weeks were you in that school?

23 A. A little over two weeks, sir.

24 Q. Okay. And you indicated that there was no
25 ceremony or celebration of the graduation other

1 than going over to Sergeant Aguirre's place?

2 A. Correct, sir.

3 Q. Okay. Was there a graduation ceremony?

4 A. When we graduated school, yes, sir.

5 Q. And did you receive any type of certificate
6 or --

7 A. Yes, sir.

8 Q. And you indicated you were the only woman
9 invited?

10 A. Yes, sir.

11 Q. It's true, is it not, at the time that you and
12 him were getting along in a pretty friendly way
13 during the time -- during the time that school
14 was going on; isn't that true?

15 A. What do you mean by friendly, sir?

16 Q. Well, it was more than just you were a student;
17 there was at least enough of a relationship
18 that you two were flirting with each other?

19 A. Yes, sir.

20 Q. So it would be a correct assumption, would it
21 not, that you two were on pretty friendly
22 terms? And pretty friendly, I mean just that,
23 friendly and not implying anything else to that
24 point, during the time you were in school.

25 A. Yes, sir.

1 Q. And it would not have been all that unusual for
2 you to have been invited over to his place for
3 a party?

4 A. Correct, sir.

5 Q. How many days after the school ended did you go
6 over to that party?

7 A. The same night of graduation, sir.

8 Q. Okay. And you indicated -- and I didn't hear
9 you to get the actual answers, so I may have to
10 ask you some of the questions over what
11 Mr. Skinder did -- that you and him began the
12 relationship, was it at the party?

13 A. Yes, sir.

14 Q. All right. And when you began a relationship,
15 what do you mean by that?

16 A. We had gone out that night, and then I had
17 spent the night at his house that night.

18 Q. You what?

19 A. I had spent the night at his house that night.

20 Q. So the same day you graduated?

21 A. Yes, sir.

22 Q. And the same night of the party?

23 A. Yes, sir.

24 Q. All right. Were you getting romantically
25 involved with him at that party?

1 A. Yes, sir.

2 Q. Would it be correct to say that was consensual
3 on both your parts?

4 A. Yes, sir.

5 Q. Did it involve sexual relationships the night
6 of the party?

7 A. Yes, sir.

8 Q. And was that consensual?

9 A. Yes, sir.

10 Q. Would you agree that that was something that
11 was mutually entered into, or did one party
12 suggest it to the other?

13 A. It was mutual, sir.

14 Q. And for a good part of this relationship, it
15 was a sexual one, was it not?

16 A. I'm sorry, sir.

17 Q. It was a sexual relationship that you had with
18 him, was it not?

19 A. Yes, sir.

20 Q. There was a time during that summer that he
21 went to another facility for training himself?

22 A. Yes, sir.

23 Q. And he was gone for approximately, what, four
24 or five weeks?

25 A. I don't know the time frame exactly, sir.

1 Q. So that would be four or five weeks you did not
2 see him?

3 A. If that's how long it was, sir.

4 Q. Whatever the whole time was?

5 A. Yes, sir.

6 Q. You are not able to tell the jury how long you
7 recall it being?

8 A. I don't remember, sir.

9 Q. Would it be a fair characterization that you
10 felt you were falling in love with Mr. Aguirre?

11 A. Yes, sir.

12 Q. And when would you say you started having those
13 types of feelings for him?

14 A. Probably before he left for school, sir.

15 Q. And if I recall your testimony, initially, it
16 seemed like everything was working out well?

17 A. Yes, sir.

18 Q. You two seemed to be getting along?

19 A. Yes, sir.

20 Q. But then he started having jealousy issues?

21 A. Yes, sir.

22 Q. All right. Now, you indicated one of those
23 jealousy issues was apparently, you went to a
24 birthday party --

25 A. Yes, sir.

1 Q. --- initially without him because you couldn't
2 get ahold of him?

3 A. Yes, sir.

4 Q. And he was upset?

5 A. Yes, sir.

6 Q. And he stayed upset, and you went back to the
7 birthday party?

8 A. No, sir.

9 Q. You did not?

10 A. No, sir.

11 Q. Did you stay with him?

12 A. Yes, sir.

13 Q. All right. You indicated to Mr. Skinder at
14 some point you decided to start moving some of
15 your stuff out?

16 A. Yes, sir.

17 Q. And I forget the dates you said you were doing
18 that.

19 A. I don't remember the date exactly, sir.

20 Q. Okay. And if I recall your testimony this
21 morning, you indicated that you left his place
22 and came back with some friends to help unload,
23 help pack his stuff up?

24 A. I never left, sir.

25 Q. You just called the friends over?

1 A. Yes, sir.

2 Q. Do you ever recall an incident where you had
3 shown up with friends to his residence?

4 A. No, sir.

5 Q. Okay. You said, if I recall your testimony,
6 there were jealousy issues, and then when
7 Mr. Skinder asked you, you remember one, you
8 talked about one, and you said there were one
9 or two. Was there a second instance of
10 jealousy?

11 A. He would just get mad if I would talk to
12 somebody on the phone, talk to one of my
13 co-workers or something, sir.

14 Q. So, in fact, you're now saying that it wasn't,
15 you know, one or two instances, there were
16 several instances?

17 A. It was a couple, one or two, sir.

18 Q. So is that one where he got upset over the
19 birthday and one because he found you talking
20 to somebody?

21 A. Yes, sir.

22 Q. Now, you indicated that you were spending a
23 good part of your time over there?

24 A. Yes, sir.

25 Q. Going back to the night of the party you went

1 to after the NCO academy -- or the NCO academy,
2 when did you start staying over there on a
3 pretty regular basis?

4 A. I had spent the night that night, and I believe
5 maybe a couple days later -- I would go over
6 there almost every day, and then I'd spend the
7 night on the weekends and stuff like that, sir.
8 And, eventually, I'd spend the night during the
9 week.

10 Q. So pretty much as soon as the academy was out
11 and plus a couple days, you started being over
12 there pretty much the majority of the time?

13 A. Yes, sir.

14 Q. And when did you start moving items that
15 belonged to you over there?

16 A. Probably about two, two and a half weeks before
17 we got in that argument.

18 Q. Okay. And basically, you said you had a TV
19 over there and DVD's?

20 A. Yes, sir.

21 Q. What type of TV?

22 A. It was a big TV, sir. I mean, I couldn't even
23 carry it.

24 Q. Okay. So that's when you called your friends
25 to come help you pick the TV up?

1 A. Yes.

2 Q. Were you able to retrieve the TV?

3 A. Yes, sir.

4 Q. After that, did you ever move any of your stuff
5 back?

6 A. No, sir.

7 Q. Okay. The people you called, were they
8 co-workers?

9 A. Yes, sir.

10 Q. NCO's?

11 A. NCO's, sir.

12 Q. And is it your testimony there was an
13 altercation where the police had to be called?

14 A. Yes, sir.

15 Q. Is that because you were outside of the house
16 trying to get in?

17 A. I was outside of the house and Danny didn't
18 like the fact that I had called some friends
19 over to help me.

20 Q. All right. And so you called the police?

21 A. He called the police.

22 Q. He called the police?

23 A. Yes, sir.

24 Q. Were you trying to get into the house?

25 A. I was at the door, sir, yelling at him because

1 he had locked the door.

2 Q. Isn't it true that, at one point, you crawled
3 through the window?

4 A. I don't believe crawling through the window,
5 sir.

6 Q. You're sure about that?

7 A. I'm almost sure, sir.

8 Q. Almost sure?

9 A. Yes, sir.

10 Q. Had you been drinking that night?

11 A. I hadn't been, sir.

12 Q. You had not been?

13 A. No.

14 Q. So, at that point, if I understand your
15 testimony, you were basically having real
16 second thoughts about this relationship?

17 A. Yes, sir.

18 Q. And were wanting to separate yourself?

19 A. Yes, sir.

20 Q. And the police came, things calmed down, you
21 were able to get your stuff out?

22 A. Yes, sir.

23 Q. And then how long was it before you saw him
24 again?

25 A. I don't remember, sir.

1 Q. Was it weeks, days?

2 A. It might have been a couple days, sir.

3 Q. Okay. Now, after the academy, you had no need
4 to -- you had no -- wouldn't be part of your
5 duties where you would be coming in contact
6 with him in any kind of professional level; is
7 that true?

8 A. After school, sir.

9 Q. Let me rephrase the questions. Maybe I
10 misspoke. After the academy, that was the only
11 time -- try it again.

12 During the academy is the only time that
13 you and him had any type of professional
14 relationship in the context of the military; is
15 that true?

16 A. Yes, sir.

17 Q. And the situation is that, after that, any
18 relationship is purely personal?

19 A. Yes, sir.

20 Q. Where you worked and where he worked were not
21 on the same place on the fort; is that correct?

22 A. It was on the same base, yes, sir. There's two
23 different forts.

24 Q. All right. But Fort Lewis is a large place, is
25 it not?

- 1 A. Kind of, sir, yes.
- 2 Q. So you wouldn't be expecting to come in contact
3 with him when you go about your duties at work?
4 You wouldn't necessarily be coming in contact
5 with him; isn't that true?
- 6 A. I work there, yes, sir.
- 7 Q. As a matter of fact, isn't it true that unless
8 you have business there, that people aren't
9 allowed to be around the corrections facility?
- 10 A. Yes, sir.
- 11 Q. And your comings and goings wouldn't take you
12 back to the academy, would it?
- 13 A. In case I had soldiers that might have been
14 appearing there, sir. I would have been able
15 to go back.
- 16 Q. But, in fact, that did not happen, did it?
- 17 A. Actually, I did have a soldier that had gone
18 through a class there, sir.
- 19 Q. So you're back at the academy for some reason?
- 20 A. I just had to go take some paperwork to him one
21 time, sir.
- 22 Q. Did you run into Sergeant Aguirre at that time?
- 23 A. No, sir.
- 24 Q. Some point after a couple days, there was an
25 attempt to try to get the relationship going

1 again?

2 A. Yes, sir.

3 Q. Was that a mutual attempt, was that your
4 initiative or his initiative?

5 A. I think it was mutual, sir.

6 Q. You don't remember?

7 A. No, sir.

8 Q. And after that couple days, was the
9 relationship -- you said it had changed a
10 little bit. How did it change a little bit?

11 A. It was just a little different.

12 Q. Okay. How?

13 A. I just felt more reserved, maybe.

14 Q. Okay. So you weren't as comfortable around
15 Sergeant Aguirre at that time, were you?

16 A. Not as comfortable as I once was, right.

17 Q. Would it be fair to say that you weren't really
18 comfortable around him at all that point?

19 A. Not at all.

20 Q. That's not a fair statement?

21 A. Right. I was comfortable around him, but it
22 wasn't as like it used to be.

23 Q. Did you continue to have sexual relations with
24 him?

25 A. Yes, sir.

1 Q. Would those be initiated mutually by you, by
2 him or all of the above?

3 A. All of the above.

4 Q. Now, my understanding is that -- I'll back up.

5 So once you got back together with him,
6 did you start staying over there on a regular
7 basis?

8 A. Not like I used to, no, sir.

9 Q. How often would you stay over there?

10 A. Maybe once or twice.

11 Q. Period, or...

12 A. I think about maybe once or twice since the
13 next incident.

14 Q. Okay. Now, apparently, you still had a key to
15 his residence?

16 A. Not anymore, sir. I gave it back when I moved
17 my stuff out.

18 Q. If I recall your testimony from this morning,
19 you indicated that you weren't sure how you got
20 in the house, whether you were let in or
21 whether you let yourself in?

22 A. Yes, sir.

23 Q. And, again, I'm going up to the 26th of August.

24 A. Yes, sir.

25 Q. So if you weren't let in, that means you would

1 have to have a key or some way to open the
2 door?

3 A. Negative, sir. I said the door was open.

4 Q. It was just left open?

5 A. Yes, sir.

6 Q. And you indicated that he came, and he was
7 extremely angry?

8 A. Yes, sir.

9 Q. All right. And had you been drinking -- you
10 testified that he had been drinking. But had
11 you been drinking?

12 A. Not until he got home, sir.

13 Q. Okay. And when he got home, what did you
14 drink?

15 A. I was drinking beer, sir.

16 Q. How much?

17 A. I probably had four or five beers that night.

18 Q. Okay. Four or five before the violence started
19 or four or five after?

20 A. Before the violence.

21 Q. Before the violence?

22 A. Yes, sir.

23 Q. What about after the violence, we'll start off
24 when he -- I believe you testified he threw you
25 up against the wall and choked you with your

1 hair?

2 A. Yes, sir. Yes, sir.

3 Q. Did you have any beer after that?

4 A. No, sir.

5 Q. Now, you indicated, if I recall from your
6 testimony this morning, that you have hair that
7 goes down to your waist?

8 A. Yes, sir.

9 Q. And that he basically grabbed that hair and
10 wrapped it around your throat?

11 A. Yes, sir.

12 Q. And that he was choking you with it?

13 A. Yes, sir.

14 Q. Okay. And I apologize, these trials are tough
15 on everybody. I am trying to ask the question
16 I need to ask as, you know, politely to you as
17 I can, so I'll do the best --

18 A. That's fine.

19 Q. -- and what have you. And if I recall your
20 testimony, you indicated that he had your hair
21 around your throat so tight that you were not
22 able to breathe?

23 A. Correct, sir.

24 Q. Were you about ready to pass out?

25 A. Yes, sir.

1 Q. Or did you pass out?

2 A. I was about ready to pass out, sir.

3 Q. So that was pretty violent -- that was a pretty
4 violent incident right then and there, was it
5 not?

6 A. Yes, sir.

7 Q. And do you recall approximately how long this
8 lasted?

9 A. I don't remember, sir. I just remember I
10 couldn't breathe, and I was trying to get away.

11 Q. Did it seem like it was just like an instant,
12 or did it seem like it went on for a period of
13 time?

14 A. It felt like awhile, sir.

15 Q. Okay. And that was after you were pushed up
16 against a wall?

17 A. Yes, sir.

18 Q. And when you were -- when you had the hair
19 around your throat, were you on the ground or
20 were you standing up or what was going on then?

21 A. I was on the ground in the kitchen, sir.

22 Q. Okay. And what type of floor does the kitchen
23 have?

24 A. Tile or linoleum.

25 Q. Okay. And had you been knocked to the floor?

1 A. Yes, sir.

2 Q. And just so I understand the situation, that it
3 wasn't just that it was uncomfortable, you
4 literally could not breathe?

5 A. Correct, sir.

6 Q. And then when he let you go, you went into the
7 bathroom?

8 A. Yes, sir.

9 Q. All right. It would sound to me that,
10 basically, if he hadn't let you go, and
11 fortunately we're not here for that, this could
12 be a whole different kind of trial, we could be
13 talking about some kind of homicide?

14 MR. SKINDER: Objection, speculation.

15 THE COURT: I'll sustain the
16 objection.

17 MR. STEELE: I'll rephrase it.

18 Q. It's possible, is it not, that if he had not
19 let go, you may very well have passed away?

20 A. I'm sure --

21 MR. SKINDER: Objection, same
22 objection.

23 THE COURT: Sustained. Mr. Steele.

24 MR. STEELE: Could we approach?

25 THE COURT: Yes.

1

2

(Off-the-record discussion.)

3

4

THE COURT: Go ahead, Mr. Steele.

5

6

MR. STEELE: So as I understand things, after he let you go, you went straight to the bathroom?

7

8

A. Yes, sir.

9

10

11

12

13

Q. Okay. And here's one of the reasons I'm standing this far over here, is so if I can't hear you, I'm pretty confident the jurors on this side of the courtroom can't hear you, either.

14

A. Yes, sir.

15

Q. Okay. Is this house in a neighborhood?

16

A. Yes, sir.

17

18

Q. Okay. When I say neighborhood, we're talking like a residential neighborhood of some sort?

19

A. Yes, sir.

20

Q. Isn't it true the house is pretty small?

21

A. I would say it's a normal-sized house, sir.

22

23

Q. Okay. Let's assume -- you said this choking incident occurred in the kitchen?

24

A. Yes, sir.

25

Q. All right. And you see where I'm standing?

1 A. Yes, sir.

2 Q. Let's say that you're standing in the kitchen.
3 Would I be closer to you -- and, again, for the
4 record, I'm right back straight across the
5 courtroom from you at the bar here. This is
6 what we call this. Would that be closer than
7 the front door was then, or would I be farther
8 away or the same distance?

9 A. You might be closer or the same distance, sir.

10 Q. So it would be close?

11 A. Yes, sir.

12 Q. And, at that point, Mr. Aguirre wasn't
13 confining you, was he?

14 A. Not when I was in the bathroom, sir.

15 Q. I'm not talking about the bathroom. I'm
16 talking about after he let you go.

17 A. Yes, sir.

18 Q. He wasn't confining you or anything like that?
19 He wasn't stopping you from going to the
20 bathroom?

21 A. Correct, sir.

22 Q. And the bathroom was the first place that you
23 went?

24 A. Yes, sir.

25 Q. So even according to you, what happened was he

1 choked you with your hair, you didn't -- your
2 first instinct was not to run out the door and
3 go get help?

4 A. I just put myself in the bathroom, sir.

5 Q. That was the first instinct you had, was it
6 not?

7 A. I just got away, sir.

8 Q. During the time, were you wearing civilian
9 clothes?

10 A. Yes, sir.

11 Q. Then you indicated he came in and basically
12 threw you out of the bathroom?

13 A. Yes, sir.

14 Q. Did he follow you immediately out?

15 A. Yes, sir.

16 Q. Okay. And it didn't occur to you to get out of
17 the situation at that point, did it?

18 A. I had looked for my keys, but I couldn't find
19 them at all, sir.

20 Q. Okay. And what time of the day was it at this
21 point, or night?

22 A. Probably around maybe 9:00, 9:00, 10:00
23 o'clock. I'm not exactly sure, sir.

24 Q. So basically what you're telling the jury is,
25 even though at that point, you had been -- and

1 correct me if I'm wrong if I get any of this
2 wrong -- slammed up against a wall, knocked to
3 the ground, strangled, thrown out of the
4 bathroom, sounds like in a very threatening
5 manner, you still did not make an effort to
6 leave the house and go get help?

7 A. I didn't know anybody around, sir. I had my --
8 I didn't have my keys.

9 Q. Did you have a purse?

10 A. Yes, sir.

11 Q. And Mr. Skinder asked you questions this
12 morning about the sexual assault, and I'm going
13 to try to ask as few as I can. I do need to
14 ask a few questions. You indicated that you
15 were thrown to the ground?

16 A. Yes.

17 Q. So this happened on the ground, not on the bed?

18 A. Yes, sir.

19 Q. And I apologize again, ma'am, but I do need to
20 be able to hear your answers.

21 A. Yes, sir.

22 Q. And the situation is, he was able to get your
23 pants off?

24 A. Yes, sir.

25 Q. And I assume you weren't wearing shoes at the

1 time?

2 A. I don't think so, sir.

3 Q. You don't remember now?

4 A. I'm pretty sure I wasn't wearing shoes, sir.

5 Q. Okay. And he also got your underwear you were
6 wearing off, too; is that correct?

7 A. Yes, sir.

8 Q. And you were on the carpet?

9 A. I believe so, sir.

10 Q. So you would agree, would you not, that
11 Mr. Aguirre was using a very extreme amount of
12 violence on you during that time?

13 A. Yes, sir.

14 Q. And according to your testimony, you were
15 fighting?

16 A. Yes, sir.

17 Q. Trying to get him off of you?

18 A. Yes, sir.

19 Q. And he was applying more force on you?

20 A. Yes, sir.

21 Q. And my understanding is he had you pinned on
22 your back on the floor?

23 A. Yes, sir.

24 Q. So it would be a fair characterization that,
25 based on what you're saying happened, that, you

1 know, his behavior was, at the risk of trying a
2 better way to phrase it, by leaps and bounds
3 was getting worse?

4 A. Yes, sir.

5 Q. And according to your testimony, you'd been
6 again thrown up against a wall, knocked to the
7 ground, strangled, had a knife pulled on you
8 and rubbed it across your face?

9 A. Yes, sir.

10 Q. Threatened and then later sexually assaulted?

11 A. Yes, sir.

12 Q. It's true, is it not, that you do have a cell
13 phone?

14 A. Yes, sir.

15 Q. And, yet, you did not that evening call the
16 police to detail that anything happened or call
17 for help or anything like that?

18 A. No, he had taken my cell phone and hid it.

19 Q. Did he have a phone in the house?

20 A. I think so, sir.

21 Q. Okay. Well, you'd been over the house quite a
22 bit?

23 A. Yes, sir.

24 Q. So you should know one way or the other if he
25 had a phone?

1 A. Yes, sir. It was portable, and I didn't know
2 where it was.

3 Q. And then you indicated you did leave when you
4 woke up that morning?

5 A. Yes, sir.

6 Q. Found your keys?

7 A. Yes, sir.

8 Q. And where were they?

9 A. Like underneath the couch there.

10 Q. All right. Got your purse?

11 A. Yes, sir.

12 Q. And you went to your place?

13 A. Yes, sir.

14 Q. And you still chose not to report that?

15 A. Correct, sir.

16 Q. All right. As a law enforcement officer, you
17 would have had the training to realize --
18 realize you've had some very serious conduct
19 done to you?

20 A. Yes, sir.

21 Q. Stuff that, to your knowledge, would have been
22 criminal misconduct?

23 A. Yes, sir.

24 Q. You're also aware of the fact, were you not,
25 that Sergeant Aguirre was a noncommissioned

1 officer, as are you?

2 A. Yes, sir.

3 Q. And is it not true that, as a soldier,
4 noncommissioned officer, you would have
5 concerns about someone like that being in the
6 military without being called to account?

7 A. Yes.

8 Q. But, yet, you did nothing?

9 A. It was -- it's a different situation, like I
10 said before, sir. If it's you and you're put
11 in that situation, I mean, you can train all
12 you want, you can tell people how to do
13 something all you want, but that's not going to
14 change the situation when it's you.

15 Q. Now, you did get back together with Sergeant
16 Aguirre the following day?

17 A. Yes, sir.

18 Q. Okay. And you indicated that you had been
19 communicating with text mail?

20 A. Between text messages.

21 Q. Text messaging?

22 A. And calling, yes, sir.

23 Q. And when we talk about text messaging, what
24 we're talking about is a feature on your cell
25 phone and Mr. Aguirre's cell phone?

1 A. Correct, sir.

2 Q. And basically, you can type out short messages
3 to send to each other?

4 A. Yes, sir.

5 Q. And you text messaged him the following day,
6 did you not?

7 A. Yes, sir.

8 Q. Okay. And is your -- do you have like a screen
9 name or something for text messaging?

10 A. No, sir.

11 Q. Okay. Do the words "MP angel" mean anything to
12 you?

13 A. That's what he probably had my name under in
14 his cell phone, sir.

15 Q. All right. May I approach the witness?

16 THE COURT: And you've shown those to
17 Mr. Skinder?

18 MR. SKINDER: Yes, Your Honor.

19 MR. STEELE: Q. I'm going to hand you
20 what's been marked as Defense Exhibits 100,
21 102, 103, 104, 105, 106. I want you to take a
22 look at those. And let me know when you're
23 done.

24 A. Okay.

25 Q. Would you please describe what those photos

1 are?

2 A. Text messages from my phone.

3 Q. All right. So would you agree you sent those
4 text messages?

5 A. Yes, sir.

6 Q. Okay. If I can take those back for a second.
7 Defense would move the admission of Exhibits
8 100, 102, 103, 104, 105 and 106.

9 THE COURT: It was 100, and then I
10 think you skipped 101 and went to 102.

11 MR. STEELE: Right. That's not a text
12 message. That's simply a screen.

13 THE COURT: So there is no 101.

14 MR. SKINDER: I have no objection,
15 Your Honor.

16 THE COURT: Defense's 100, 102, 103,
17 104, 105 and 106 will be admitted.

18
19 (WHEREUPON Defendant's Exhibits 100,
20 102, 103, 104 and 105 were admitted into
21 evidence.)

22
23 MR. STEELE: May I publish those to
24 the jury?

25 THE COURT: Yes.

1 MR. SKINDER: If I could, could I do
2 it the old-fashioned way and pass it through
3 the jury?

4 THE COURT: So I just want to remind
5 the jury that exhibits that are admitted are
6 going to go back with you once you begin your
7 deliberations, and this is just really an
8 opportunity to look through the exhibits right
9 now.

10 MR. SKINDER: Q. So you would agree
11 these are text messages that you sent on the
12 27th of August?

13 A. The ones that had the date on it, yes, sir.

14 Q. Okay. And those would have been after the
15 incidents you've testified about being
16 strangled, knocked to the ground -- well,
17 knocked to the ground, strangled, sexually
18 assaulted, and also having a weapon and a knife
19 being used against you?

20 A. Yes, sir.

21 Q. So you indicated on one of the text messages,
22 you still want to watch a movie?

23 A. Yes, sir.

24 Q. Were you talking about going out to see a
25 movie, going to his place to watch a movie or

1 going to your place to watch a movie?

2 A. He called me earlier and asked me to come back
3 over, and I told him -- that's when we had the
4 discussion -- I was scared of him and what
5 happened last night, and he had explained to me
6 that he had been put back on his medication
7 again and that he was just really drunk last
8 night.

9 Q. Okay. And then you have one, the letter "R"
10 you still there. Are you trying to see if he
11 was still listening to you?

12 A. I don't even know, sir.

13 Q. And, "I love you, see you later"?

14 A. Yes, sir.

15 Q. And this also was after the incidents that you
16 testified about?

17 A. Yes, sir.

18 Q. And then, "Can you talk right now, I thought
19 you on your way back." That was also after
20 this incident occurred?

21 A. Did that one have a date on it, sir?

22 Q. I didn't see one, but do you recall sending
23 that?

24 A. I thought one was from the day before, when he
25 was on his way back to the house before all

1 that stuff happened.

2 Q. Okay. So despite everything that happened --
3 and the 26th, that would have been a Saturday
4 evening?

5 A. Correct, sir.

6 Q. So despite everything that happened, you did go
7 back over to his residence?

8 A. The next day, yes, sir.

9 Q. And the situation is, you got into an argument
10 again?

11 A. Yes, sir.

12 Q. Because he was trying to see what was in your
13 glove compartment?

14 A. Yes, sir.

15 Q. And you wanted to make sure that he didn't, so
16 you actually threw the materials into the
17 bushes?

18 A. I just grabbed some of the stuff, yes, sir.

19 Q. Okay. And, at some point, you called an
20 officer?

21 A. Yes, sir.

22 Q. You called 9-1-1?

23 A. Yes, sir.

24 Q. And then you indicated on the tape that there
25 was -- in the recording, there was nothing

1 going on, everything was fine?

2 A. He was standing right there, sir.

3 Q. Okay. Isn't it true you said that you
4 basically were calling to get some assistance
5 to get your keys back?

6 A. What's that, sir?

7 Q. Your purpose for calling was to get your keys
8 back?

9 A. Yes, sir.

10 Q. And he handed the keys back?

11 A. He handed the keys to me, sir.

12 Q. And, at that point, you said there's no further
13 problem?

14 A. Yes, sir.

15 Q. Okay. And then later, you -- that evening, you
16 got -- you were contacted by sergeant -- or not
17 sergeant -- a Deputy Carter, a female deputy?

18 A. Yes, sir.

19 Q. And isn't it true that you told her --
20 basically, you did not tell her the truth about
21 what happened?

22 A. Negative, sir.

23 Q. You told her that you were raped?

24 A. I told her -- I didn't say that at all, sir. I
25 explained to her that we had gotten -- he had

1 hit me the night before, and I showed her the
2 bruises, and she asked me if I wanted to write
3 a statement up, and I said I was going to but
4 she was just very rude about it. So I was just
5 like I'll just forget about it and go home.

6 Q. Even though you had been strangled?

7 A. I just wanted to put it all behind me and
8 forget about it, sir.

9 Q. My question was: Even though you'd been
10 strangled?

11 A. Correct, sir.

12 Q. Even though you'd been sexually assaulted?

13 A. Yes, sir.

14 Q. And you admitted the following day that you
15 were not truthful with Deputy Carter; isn't
16 that true?

17 A. About what, sir?

18 Q. Isn't it true you indicated to Deputy Wilkinson
19 the following day on the 28th of August that
20 you now wanted to tell the truth about what
21 happened?

22 A. I wanted to tell the truth before, sir, but I
23 just didn't feel comfortable talking to her at
24 the time. And then I went home and I thought
25 about it all night, and I decided I wanted to

1 tell somebody in the morning, sir.

2 Q. So when did you reach that revelation that you
3 wanted to tell someone in the morning?

4 A. That night, when I was at home thinking about
5 it all night, sir.

6 Q. Okay. Now, you have a telephone in your home,
7 do you not?

8 A. Correct, sir.

9 Q. And you know the number for 9-1-1?

10 A. Yes, sir.

11 Q. You're also aware of the fact that you were, at
12 the very least, sore, I mean, physically sore
13 from what happened?

14 A. Yes, sir.

15 Q. If I recall your testimony from this morning,
16 you were concerned you may have been injured?

17 A. Yes, sir.

18 Q. Because of what happened?

19 A. Yes, sir.

20 Q. You were afraid of Sergeant Aguirre at this
21 point?

22 A. Yes, sir.

23 Q. No telling what he would do; isn't that true?

24 A. Yes, sir.

25 Q. And so your plan now sometime in the evening of

1 27th or early morning the 28th was to go tell
2 someone the next morning?

3 A. Yes, sir.

4 Q. Okay. But you went -- but you went to your
5 work instead?

6 A. Yes, sir.

7 Q. You didn't go tell anybody, did you?

8 A. Not that night, sir.

9 Q. Or first thing in the morning?

10 A. I thought he was -- I wasn't sure what happened
11 to him because he called me right after the
12 police showed up at his house and they had him
13 get off the phone, and I didn't know he was
14 arrested. I assumed he was arrested or taken
15 away or something that night, so I just figured
16 I'd wait in the morning, and then once I calmed
17 down, that way, I could talk to someone I
18 trusted, sir.

19 Q. Even though you didn't give the police very
20 much information about what happened?

21 A. The night before, sir?

22 Q. Yes.

23 A. Yes, sir.

24 Q. You thought he might have been arrested anyway?

25 A. I had just -- I didn't know, sir.

1 Q. Okay. So, instead, what you do is you go
2 straight to your work station?

3 A. Yes, sir.

4 Q. Okay. And you indicated you're wearing an Army
5 T-shirt and shorts?

6 A. Yes, sir.

7 Q. Was that for physical training?

8 A. It was before.

9 Q. Before physical training?

10 A. Yes, sir.

11 Q. And I understand, is that how you start your
12 day off, doing physical training before you go
13 to your duties?

14 A. Yes, sir.

15 Q. And that's when the bruises were noticed by
16 your -- that's when the bruises were noticed by
17 your platoon leader?

18 A. I had spoke to one of the higher NCO's, and I
19 had showed her the bruises, sir.

20 Q. Okay. They're the ones that directed you to go
21 to Madigan and get a police report?

22 A. I had already explained to them I wanted to go
23 talk to somebody, and they just kind of pointed
24 me in the right direction, sir.

25 Q. So, at that time, you were resolved to tell

1 people what happened?

2 A. I only told two people higher than me, sir.

3 Q. So, at that point, you were resolved that you
4 were going to report Mr. Aguirre's conduct to
5 law enforcement?

6 A. Yes, sir.

7 Q. Is that true?

8 A. Yes, sir.

9 Q. So you were essentially sorting things out in
10 your mind about what you needed to do?

11 A. Yes, sir.

12 Q. And that would have been on the 28th?

13 A. Yes, sir.

14 Q. Now -- excuse me for just a second, Your Honor.

15 I'm going to back up to when you had a
16 conversation with Sergeant Carter. Isn't it
17 true that you told her that you were a soldier,
18 and you and Mr. Aguirre were practicing combat
19 moves?

20 A. I had told her we were arguing, because I just
21 wanted to leave.

22 Q. Isn't it true that you told her that you were
23 practicing with Sergeant Aguirre combat moves?

24 A. I had told her that, yes, sir.

25 Q. And what you're telling us now is that's not

1 the truth?

2 A. Correct, sir.

3 Q. So, in fact, you're now letting the jury know
4 that, for whatever reason, you chose to lie
5 to -- excuse me -- Deputy Carter?

6 A. I told her that, yes, sir.

7 Q. That was a lie?

8 A. Correct, sir.

9 Q. I would assume, is it not, that rape is not a
10 combat move?

11 A. Negative, sir.

12 Q. Or slamming a girlfriend up against a wall?

13 A. Correct, sir.

14 Q. Isn't it true that you have practiced combat
15 moves with Sergeant Aguirre?

16 A. Negative, sir.

17 Q. You never have?

18 A. No, sir.

19 Q. Have you ever heard anything called combatics?

20 A. Combatics?

21 Q. Yes.

22 A. Not really, sir.

23 Q. Have you ever practiced in the military any
24 type of hand-to-hand combat skills or anything
25 like that?

1 A. Unarmed self-defense.

2 Q. What do you refer to those as? Do you have any
3 particular name for them?

4 A. USD, sir. That's all I've ever known it as.

5 Q. Okay. So you also told Deputy Carter that the
6 combat practice got out of hand and that's how
7 you got injured?

8 A. I don't remember what I said to her, sir.

9 Q. So, basically, it was a little more with
10 Sergeant Carter than Mr. Aguirre struck you,
11 but you didn't want to provide a statement or
12 anything like that, you actually gave her false
13 information?

14 A. Correct, sir. I didn't feel comfortable
15 talking to her at all, sir.

16 Q. But you didn't say that you didn't feel
17 comfortable talking to her and would prefer to
18 talk to another deputy?

19 A. I didn't think -- I didn't know if I had that
20 choice, sir.

21 Q. Okay.

22 A. Until I went home and I thought about it.

23 Q. Or you could have said, "I'm not really
24 comfortable talking to you, but I feel the need
25 to make a report, I'll call someone later"?

1 A. That's what she told me, sir.

2 Q. Told you what?

3 A. If I felt comfortable talking to somebody else,
4 I could go make a report.

5 Q. Okay. But the bottom line is, you would agree
6 that making a false statement was not something
7 that you needed to do to get Deputy Carter out
8 of the situation?

9 A. Correct, sir.

10 Q. But, yet, you lied anyway?

11 A. I did, sir.

12 Q. And it's your testimony that you and
13 Mr. Aguirre -- or Sergeant Aguirre never even
14 playing around, practiced any kind of
15 hand-to-hand combat moves or anything like
16 that?

17 A. Negative, sir. Negative.

18 Q. Now, I want to back up. After you met with
19 Deputy Wilkinson, you then met with then
20 detective now Sergeant Stines?

21 A. I believe so. Yes, sir.

22 Q. Okay. And that would have been on or about the
23 1st of September?

24 A. I don't remember any of the days. Probably
25 around there, sir.

1 Q. Isn't it true the first time you met with her,
2 you weren't sure what you wanted to do and did
3 not want to give a statement?

4 A. I wasn't sure. Yes, sir, because I didn't know
5 what I wanted. I didn't know what was going
6 on.

7 Q. So you really hadn't resolved it in your mind
8 what you wanted to do?

9 A. Correct, sir.

10 Q. I didn't hear you.

11 A. Correct, sir.

12 Q. Now, in addition, is it true that you had a
13 MySpace web page?

14 A. Yes, sir.

15 Q. And isn't it true, for a time, you had it set
16 up so that Mr. Aguirre's brother, Jimmy
17 Aguirre, could have access to messages and what
18 have you?

19 A. He was on my friends list before, yes, sir.

20 Q. Isn't it true that you had, through that web
21 page, sent messages to him trying to find out
22 where Sergeant Aguirre was?

23 A. Negative.

24 Q. Or trying to contact him?

25 A. Negative, sir.

1 Q. You're sure about that?

2 A. I'm positive, sir.

3 Q. How long had Jimmy Aguirre been on the friends
4 list?

5 A. I'd forgotten he was even on there until
6 Mr. Skinder had mentioned it one time, and, as
7 soon as I found out, I took him off of it.

8 Q. Okay. In order to be on the friends list, you
9 have to -- you affirmatively have to put
10 someone on there; is that true?

11 A. Roger that, sir.

12 Q. And do you recall when you put him on?

13 A. July. Sometime in the summertime, sir.

14 Q. But it's your testimony that you never
15 attempted to contact him after this incident
16 occurred?

17 A. Roger, sir.

18 MR. STEELE: If I may have a moment
19 with my client, Your Honor. I just have a few
20 more questions, Your Honor.

21 Q. Okay. After your report, after you reported
22 this to Madigan and also the police department,
23 it is true that you did have photos made?

24 A. Yes, sir.

25 Q. And also disclosed what your injuries were?

1 A. Yes, sir.

2 Q. And, to your knowledge, they photographed all
3 the bruises you had?

4 A. Yes, sir.

5 MR. STEELE: I have no further
6 questions at this time, Your Honor.

7 THE COURT: Thank you. Mr. Skinder,
8 do you have very much for redirect?

9 MR. SKINDER: I don't, Your Honor. I
10 have five major questions that might have a
11 connecting question or two, but I'm hoping it
12 will be very brief.

13 THE COURT: What I'm going to plan to
14 do, then, is allow this witness to be finished
15 with the questions, and then we'll take our
16 afternoon recess after that, just to kind of
17 give you a heads up. Okay. Go ahead,
18 Mr. Skinder.

19 MR. SKINDER: Thank you, Your Honor.

20 THE COURT: And, actually, Mr. Steele
21 will have an opportunity for recross after
22 that, if he chooses.

23

24 //

25 //

1 REDIRECT EXAMINATION

2

3 BY MR. SKINDER: Q. Good afternoon
4 again. The e-mail messages that you looked at
5 in Exhibits 100, 102, three, four, five?

6 A. Yes, sir.

7 Q. Were those -- I just want to make sure I
8 understand: Were there e-mails going in both
9 directions?

10 A. Yes, sir.

11 Q. Were those copies of the e-mails that the
12 defendant sent to you?

13 A. I don't know, sir. My number was there, so I
14 assumed they were from me.

15 Q. Okay.

16 A. It could have been the other way around.

17 Q. Let me rephrase it. Are there any of the
18 e-mails he sent you in those exhibits?

19 A. No, sir.

20 Q. When you -- responding to a question Mr. Steele
21 asked you, might be an issue of semantics, but
22 he stated you had photos made. I want to --
23 did you go and have photos made of your
24 injuries?

25 A. The doctor and Detective Wilkinson took

1 pictures of them, sir.

2 Q. So it wasn't a situation you going and --

3 A. Negative, sir.

4 Q. When you were asked about this combat moves
5 with the defendant, first of all -- well,
6 actually, let me step back for a second.
7 Strike that.

8 You said that the training you had had
9 was in USD. Does that stand for unarmed
10 self-defense?

11 A. Yes, sir.

12 Q. Okay. Now, when you were asked if you'd ever
13 practiced combat moves with the defendant, you
14 replied negative?

15 A. Roger that.

16 Q. Why are you so certain of that?

17 A. Because it was never like that, sir.

18 Q. Who would you practice USD with?

19 A. Your command during training week or something
20 like that, sir. That's the only time you would
21 practice that.

22 Q. Okay. When Mr. Steele was asking you about
23 your explaining to Deputy Carter that you had
24 been hurt, specifically in that encounter that
25 you had with that deputy, did she ever ask you

1 to explain bruises that you had on you?

2 A. No, sir.

3 Q. Did she ever see the bruises you had on you?

4 A. I tried showing her the one on my arms.

5 Q. Did she want to know how you had received those
6 bruises?

7 A. She was just like, "Do you want to write a
8 statement?" She was just rude about it, and I
9 didn't want to talk to her.

10 Q. And then the last questions that I have are: I
11 asked you some of these questions, I know
12 defense did as well, about why you acted
13 certain ways in certain circumstances. I would
14 ask you to respond to this statement as whether
15 you agree with it or don't agree with it...

16 A. Okay.

17 Q. Did you think that you could handle the
18 situation with the defendant on your own?

19 A. No.

20 Q. After they happened, there were certainly
21 people you could have talked to. Why didn't
22 you choose to talk to those people at that
23 time?

24 A. Because I didn't feel comfortable talking about
25 it, and I still don't feel comfortable talking

1 about it to anybody. I mean, when something
2 like that happens to you, you don't want to go
3 out and tell the whole world about your
4 experiences or what's gone on. I just wanted
5 to keep it to myself and enclosed and just hide
6 from it.

7 MR. SKINDER: I have no further
8 questions. Thank you.

9 THE COURT: Mr. Steele.

10

11

RECROSS-EXAMINATION

12

13 BY MR. STEELE: Q. It would be a fair
14 statement, would it not, you were very afraid
15 of Sergeant Aguirre at that point?

16 A. Yes, sir.

17 Q. When I say at that point, I guess I apologize,
18 I should probably clarify: You would have been
19 very much afraid of him the night of the first
20 violence on the 26th, but also you would have
21 been afraid of him when -- you would have been
22 afraid of him certainly after the last time you
23 saw him; isn't that correct?

24 MR. SKINDER: Your Honor, I'm going to
25 object to exceeding the scope of redirect.

1 MR. STEELE: I don't believe --

2 THE COURT: Hang on. In my review of
3 the notes that the Court took, those questions
4 weren't asked on redirect. So your question
5 does exceed the scope of redirect.

6 MR. SKINDER: If I may approach, Your
7 Honor.

8 THE COURT: Yes. Come on up to
9 sidebar.

10

11 (Off-the-record discussion.)

12

13 MR. STEELE: Q. It is true you were
14 instructed by your chain of command to report
15 this?

16 A. I had already decided I was going to report it
17 before then.

18 Q. My question is: Isn't it true you were
19 instructed by your chain of command to report
20 this?

21 A. Eventually, yes, sir.

22 Q. And at the time that you were so instructed,
23 you had not as of yet reported it to anybody?

24 A. Right, sir, I had told my friend, higher NCO.

25 Q. But you did not make any official report of

1 this?

2 A. Not an official one, correct, sir.

3 MR. STEELE: No further questions.

4 MR. SKINDER: No further questions.

5 THE COURT: Mr. Skinder, may this
6 witness be excused.

7 MR. SKINDER: Yes, Your Honor.

8 MR. STEELE: I don't have a problem,
9 Your Honor, with her being excused at this
10 point, but I would ask she remain under
11 subpoena in case I need to call her in my own
12 case or on rebuttal.

13 MR. SKINDER: And I agree with that as
14 well because the State might feel it necessary
15 to call her as a rebuttal witness.

16 THE COURT: Thank you. You may step
17 down. We are going to take a brief afternoon
18 recess at this point, and the bailiff will get
19 you back when the Court is ready to have you
20 come in. We're going to take up a few matters
21 outside of your presence, and it might make the
22 afternoon recess a little bit longer. Okay.
23 Just remember not to discuss this case among
24 yourselves.

25

1 (Whereupon the jury left the courtroom.)

2
3 THE COURT: Counsel.

4 MR. STEELE: I wish to make a record.
5 I understand the Court's made its ruling, but
6 there was evidence elicited on redirect
7 examination that she didn't feel comfortable
8 making a report, that she still did not feel
9 comfortable talking about it, and it is the
10 defendant's position that we should have been
11 allowed to ask about her fear and what have you
12 to make sure that we can argue at the end of
13 this trial that the fear she talks about would
14 have -- we'd at least be able to argue to the
15 jury the fear she talked about would override
16 the reluctance to talk about it. I may have
17 covered that during my case, but I think it was
18 brought up on redirect, and I should have been
19 allowed to go into that. And, at this point, I
20 just want to make sure it's on the record what
21 my responsive objection was.

22 THE COURT: Your response will be
23 noted for the record, and, as I indicated at
24 sidebar, counsel, it's the Court's ruling that
25 question exceeded the scope of redirect, and,

APPENDIX J



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Superior Court Case Summary

Court: Thurston Superior
Case Number: 06-1-01702-5

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Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	09-18-2006	PRE-TRIAL REPORT	Pre-trial Report	
2	09-18-2006	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
3	09-18-2006	PRELIMINARY APPEARANCE JDG0003	Preliminary Appearance Judge Richard A. Strophy	
			Cc Berndson Cr Messing	
4	09-18-2006	ORD DETERMIN PROBABLE CAUSE	Ord Determin Probable Cause	
5	09-18-2006	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
6	09-18-2006	NO CONTACT ORDER	No Contact Order	
7	09-18-2006	NO CONTACT ORDER	No Contact Order	
8	09-19-2006	INFORMATION	Information	
9	09-19-2006	NOTICE OF HEARING ACTION	Notice Of Hearing Arraignment	09-28-20064P
10	09-26-2006	NOT OF APPEAR AND REQ FOR DISCOVERY ATD0001	Not Of Appear And Req For Discovery Meyer, Samuel Gregory	
11	09-28-2006	DISPOSITION REPORT RCV'D	Disposition Report Rcv'd	
12	09-28-2006	INITIAL ARRAIGNMENT JDG0003	Initial Arraignment Judge Richard A. Strophy	
			Cc Orcutt Cr Shackell	
13	09-28-2006	ORDER SETTING TRIAL DATE ACTION	Order Setting Trial Date *60 Days 09-28-06	11-13-2006
-	09-28-2006	COMMENT ENTRY	Pretrial/omnibus Hearing	10-19-20064A
14	09-28-2006	NOT OF APPEAR AND REQ FOR DISCOVERY ATD0002	Not Of Appear And Req For Discovery Steele, George Alan	
15	09-28-2006	NOT OF APPEAR AND REQ FOR DISCOVERY ATD0002	Not Of Appear And Req For Discovery Steele, George Alan	
16	10-19-2006	MOTION HEARING JDG0002	Motion Hearing Judge Paula Casey	
			Cc Woods	
17	10-19-2006	ORDER OF RELEASE	Order Of Release Of Property	

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18	10-19-2006	ORDER FOR CONTINUANCE: STIPULATED ACTION	Order For Continuance: Stipulated Last Td 01-03-07	12-04-2006
-	10-19-2006	COMMENT ENTRY	Pretrial/omnibus	11-09-20064A
19	11-09-2006	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Pretrial/omnibus* (hicks) Cc Yates	11-16-20064A
20	11-16-2006	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested (hicks) Cc Berndson	
21	11-16-2006	STATE'S LIST OF WITNESSES	State's List Of Witnesses	
22	11-16-2006	NOTICE OF HEARING ACTION	Notice Of Hearing Pretrial/bail Review	11-22-20063P
23	11-22-2006	NOTICE OF HEARING ACTION	Notice Of Hearing Review Release Conditions 1:30 Pm	11-30-2006A1
24	11-22-2006	HEARING CONTINUED:CALENDAR CONFLICT ACTION	Hearing Continued:calendar Conflict Review Release Cond (noted Above) (strophy) Cc Donnelly	11-30-2006
25	11-22-2006	HEARING CANCELLED: COURT'S REQUEST	Hearing Cancelled: Court's Request Hicks Cc Woods Cr Beswick	
26	11-27-2006	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
27	11-30-2006	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Calendar Call (hicks) Cc Yates	12-04-20061A
31	11-30-2006	ORDER FOR CONTINUANCE: STIPULATED ACTION	Order For Continuance: Stipulated Last Td 02-07-07	01-08-2007J
-	11-30-2006	COMMENT ENTRY	Pretrial/omnibus	12-14-20064A
-	11-30-2006	COMMENT ENTRY	Status Hearing	01-03-2007SC
28	12-04-2006	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested Wickham Cc Woods Cr Messing	
-	12-04-2006	NOTE FOR CALENDAR	Note For Calendar	12-04-2006PR
29	12-04-2006	MOTION HEARING JDG0008	Motion Hearing Cc Yates Cr Messing Judge Chris Wickham	
30	12-04-2006	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
31.1	12-04-2006	MOTION HEARING JDG0008	Motion Hearing Judge Chris	

			Wickham	
			Cc Yates Cr Messing	
32	12-04-2006	SHERIFF'S OFFICE RECEIPT	Sheriff's Office Receipt 57760	
33	12-04-2006	BAIL BOND	Bail Bond Audrey	
34	12-04-2006	LETTER	Letter	
35.99	12-06-2006	REPORT	Report Safe To Be At Large	
-	12-06-2006	CONFIDNTL REPORT IN SEALED ENVELOPE	Confidntl Report In Sealed Envelope	
-	12-06-2006	COMMENT ENTRY	Prelim Cal	12-06-2006PR
36	12-06-2006	MOTION HEARING JDG0008	Motion Hearing Judge Chris Wickham	
			Cc Bales Cr Messing	
37	12-06-2006	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
-	12-11-2006	COMMENT ENTRY	Status Hearing	02-07-2007SC
38	12-14-2006	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Pretrial Omnibus* 1:30	12-21-20064A
			Wickham Cc Parascondola	
39	12-19-2006	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
40	12-21-2006	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Pretrial Omnibus**	12-22-2006A2
			Mcphee Cc Woods Cr Beehler	
41	12-22-2006	MOTION HEARING JDG0004	Motion Hearing Judge William Thomas Mcphee	
			Cc Woods Cr Beehler	
43	12-22-2006	ORDER FOR CONTINUANCE: STIPULATED ACTION	Order For Continuance: Stipulated	02-12-2007J
			*last Td 03-12-2007	
-	12-22-2006	COMMENT ENTRY	Pretrial/omnibus	01-10-20073A
42	12-26-2006	NOTICE OF HEARING ACTION	Notice Of Hearing Review Release	12-28-2006
			Set With Wickham	
44	12-28-2006	MOTION HEARING JDG0008	Motion Hearing Cc Woods Cr Messing	
			Judge Chris Wickham	
45	12-28-2006	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
46	01-03-2007	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested	
			Wickham Cc Parascondola	
47	01-03-2007	DEFENDANT'S LIST OF	Defendant's List Of	

		WITNESSES	Witnesses	
48	01-03-2007	SUBPOENA	Subpoena	
49	01-10-2007	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Pretrial Omnibus*	01-17- 20073A
			Strophy Cc Woods	
50	01-17-2007	HEARING CONTINUED: STIPULATED ACTION	Hearing Continued: Stipulated Pretrial Omnibus**	01-24- 20073A
			Wickham Cc Woods	
50.1	01-23-2007	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
51	01-24-2007	OMNIBUS ORDER ACTION	Omnibus Order Motion In Limine	02-12- 2007CA
52	01-24-2007	OMNIBUS HEARING JDG0003	Omnibus Hearing Judge Richard A. Strophy	
			Cc Bales	
53	01-25-2007	SUBPOENA	Subpoena	
54	01-25-2007	DEFENDANT'S LIST OF WITNESSES	Defendant's List Of Witnesses	
55	01-31-2007	STATE'S LIST OF WITNESSES	State's List Of Witnesses 1st	
56	02-07-2007	STATUS CONFERENCE / HEARING JDG0003	Status Conference / Hearing Cc Williams Cr Webber Judge Richard A. Strophy	
57	02-09-2007	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions	
58	02-12-2007	VOIR DIRE ONLY HEARING APT	Voir Dire Only Hearing Actual Proceeding Time	
-	02-12-2007	JURY TRIAL APT JDG0009	Jury Trial Actual Proceeding Time Judge Anne Hirsch Cc Yates Cr Shackell	
59	02-12-2007	JURY ROLL CALL	Jury Roll Call	
59.1	02-12-2007	RECEIPT(S)	Receipt(s)	
-	02-13-2007	TRIAL MINUTES	Trial Minutes Day 2	
-	02-14-2007	TRIAL MINUTES	Trial Minutes Day 3	
-	02-15-2007	TRIAL MINUTES	Trial Minutes Day 4	
60	02-15-2007	EXHIBIT LIST	Exhibit List	
61	02-15-2007	STIP&OR RET EXHBTS UNOPNED DEPOSTNS	Stip&or Ret Exhbts Unopened Depostns	
62	02-15-2007	WITNESS RECORD	Witness Record	
-	02-16-2007	TRIAL MINUTES	Trial Minutes Day 5	
63	02-16-2007	JURY NOTE	Jury Note 10:00 Am	
64	02-16-2007	JURY NOTE	Jury Note 2:55 Pm	
65	02-16-2007	JURY PANEL	Jury Panel	
66	02-16-2007	JURY NOTE	Jury Note 4:46	
67	02-16-2007	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release	
68	02-16-2007	VERDICT	Verdict Form I	

69	02-16-2007	VERDICT	Verdict Form Ii
70	02-16-2007	VERDICT	Verdict Form Iii
71	02-16-2007	VERDICT	Verdict Form I-a Special
72	02-16-2007	VERDICT	Verdict Form Ii-a Special
73	02-16-2007	VERDICT	Verdict Form Ii-b Special
74	02-16-2007	VERDICT	Verdict Form Iii-a Special
75	02-16-2007	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury
75.1	02-16-2007	PRESENTENCE INVESTIGATION ORDER	Presentence Investigation Order
76	02-21-2007	NOTICE OF HEARING ACTION	Notice Of Hearing 04-12- Sentencing 8:30 Am 2007N9 Hirsch
77	03-06-2007	NOTICE OF HEARING ACTION	Notice Of Hearing 04-10- Sentencing 8:30 Am 2007N9 Hirsch
78	03-28-2007	PRE-SENTENCING INVESTIGATION REPORT	Pre-sentencing Investigation Report
79	04-04-2007	DECLARATION	Declaration Of Gordon Mccloud
80	04-04-2007	MOTION TO CONTINUE	Motion To Continue Sentencing
81	04-04-2007	MOTION	Motion For Substitution
82	04-10-2007	MOTION HEARING JDG0009	Motion Hearing Judge Anne Hirsch Cc Yates Cr Messing
83	04-10-2007	MOTION FOR INDIGENCY	Motion For Indigency
84	04-10-2007	DECLARATION	Declaration In Support
85	04-10-2007	ORDER OF INDIGENCY	Order Of Indigency
86	04-12-2007	SENTENCING HEARING JDG0009	Sentencing Hearing Cc Yates Cr Messing Judge Anne Hirsch
87	04-12-2007	FELONY JUDGMENT AND SENTENCE	Felony Judgment And Sentence
88	04-12-2007	NO CONTACT ORDER	No Contact Order
89	04-12-2007	REPORT	Report Of Offender Scoring
90	04-12-2007	COST BILL	Cost Bill
91	04-16-2007	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal
92	04-17-2007	LETTER	Letter To Ct Appeals W/notice
93	04-20-2007	REIMBURSEMENT- WITNESS FEES	Reimbursement- witness Fees
94	04-25-2007	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
95	04-25-2007	CLERK'S PAPERS SENT	Clerk's Papers P 1- 157
96	04-25-2007	LETTER	Letter To Counsel W/index
97	04-30-2007	NOTICE	Notice Fr Ct Appeal Re Fee/service

98	05-09-2007	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
99	05-17-2007	MOTION FOR INDIGENCY	Motion For Indigency Amended
100	05-18-2007	ORDER OF INDIGENCY	Order Of Indigency Amended
-	05-18-2007	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order
101	05-18-2007	LETTER	Letter To Ct Appeal W/indigency
102	05-21-2007	LETTER	Letter To Ct Appeal W/1 Vol Clp
103	05-23-2007	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
104	05-24-2007	CLERK'S PAPERS SENT	Clerk's Papers Sent P 158-162
105	05-24-2007	LETTER	Letter To Mccloud W/ Clp Index
106	05-24-2007	LETTER	Letter To Ct Appeal W/1 Vol Clp
-	06-04-2007	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 2 Vol Cr Messing 4-10-07 4-12-07
107	06-05-2007	LETTER	Letter To Ct Appeal W/2 Vol Tran
108	06-25-2007	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 5 Vol Cr Shackell Feb 12- 16 2007
109	06-25-2007	LETTER	Letter To Ct Appeals W/5 Vol Tran
110	06-29-2007	STATEMENT	Statement Of Arrangements Amended
111	07-02-2007	LETTER	Letter To Ct Appeal W/ Soa
112	09-11-2007	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers Supp
113	09-12-2007	CLERK'S PAPERS SENT	Clerk's Papers Sent P 163-166
114	09-12-2007	LETTER	Letter To Ct Appeals W/1 Vol Clp
115	09-12-2007	LETTER	Letter To Counsel Re 1 Vol Clp
116	04-12-2010	MANDATE	Mandate Affirming

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APPENDIX K

041207-0830-State v Aguirre
APPEARANCES

For the Plaintiff: JOHN SKINDER
Prosecuting Attorney
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Olympia, Washington 98502

For the Defendant: GEORGE STEELE
Attorney at Law
P.O. Box 2370
Shelton, Washington 98584

2

State of Washington vs. Daniel Marshall Aguirre

1 April 12, 2007, in Olympia, Washington
2 Before the Honorable ANNE HIRSCH, Presiding
3 Representing the Plaintiff, JOHN SKINDER
4 Representing the Defendant, GEORGE STEELE
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5 SONYA MESSING, Official Court Reporter

6 --oo0oo--

7
8 THE COURT: Good morning. You can be
9 seated. We are on the record in the Aguirre
10 matter. We are scheduled for sentencing today.
11 Is everybody ready to proceed?

12 MR. SKINDER: Yes, your Honor.

13 MR. STEELE: Yes, your Honor.

14 THE COURT: Go ahead, Mr. Skinder.

15 MR. SKINDER: Thank you, your Honor.
16 This matter proceeded to trial back on
17 February 12th. The jury returned verdicts on
18 Count 1 of not guilty but then guilty on Count
19 2, which was rape in the second degree, and
20 Count 3, which was assault in the second degree
21 with a special verdict finding on that count of
22 a finding that a deadly weapon was used, as
23 well.

24 In addition, special verdict forms were
25 returned on verdicts two and three where the

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1 jury found that these qualified as domestic
2 violence crimes.

3 The State's recommendation today is for
4 the Court to impose on Count 2, the assault in
5 the second degree while armed with a deadly
6 weapon, 14 months for the assault two with an
7 addition a 12 months for the enhancement for

8 26 months on that count.

9 For Count 3, the rape in the second
10 degree, the State is asking the Court to impose
11 the high end of that range, which is
12 125 months. The State is also asking the Court
13 to -- by law, the deadly weapon enhancement
14 from Count 2 would be applied on Count 3 to
15 make that an effective sentence of 137 months.

16 I believe the high end for the standard
17 range is appropriate in this case. As the
18 Court will recall from the testimony, this was
19 a relationship that the defendant had with
20 Emily, the victim in this case who is present
21 in court today, that they had begun their
22 relationship the night of graduation from NCO
23 Academy, and that at first the relationship was
24 relatively okay, but then it proceeded to have
25 signs of trouble where there was some

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1 isolation. Ms. Laughman talked about being
2 isolated from friends, and that on this evening
3 in question, the assault and the rape occurred.

4 what I find particularly upsetting about
5 the particular crimes in this case is that they
6 were done with almost a taunting sadistic --
7 done in a taunting sadistic manner. As the
8 Court will remember from the testimony, the
9 defendant during the time period was telling
10 the victim that she should be tough enough,

11 that she should be able to defend herself, that
12 why can't she stop him, and that she should be
13 able to.

14 Also, the threat with the knife I
15 believe was a particularly scary incident with
16 rubbing a knife up and down someone's face,
17 telling them that you are a psychopath, and as
18 the Court will remember, that assault occurred
19 shortly before the rape.

20 The Court heard from Det. Stines, who
21 could not be present today but did want to be
22 present. She had another obligation that made
23 it so she could not be here, but both
24 Det. Stines and Dep. Wilkinson, who the Court
25 also heard from in the trial, felt that this

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1 was one of the most important cases in their
2 career, and I believe they felt that way, from
3 the conversations I have had with them, based
4 upon how clear it was to them the emotional
5 effect that this had upon Emily Laughman.

6 And I read with interest the presentence
7 investigation in this case where the defendant,
8 perhaps not surprisingly based on the testimony
9 that he gave in this case, was very
10 unremorseful and continued to blame the victim
11 in this case.

12 What is interesting about that, and I
13 think both from a law enforcement perspective

14 and also from during the trial, Ms. Laughman
15 has never exhibited any spite or vengeance
16 towards this defendant.

17 I think it's fair to say she was
18 incredibly hurt by the actions that happened,
19 but even this morning when I spoke with her and
20 I asked her if she wanted to speak in this
21 sentencing today, and she indicated she most
22 likely didn't, but I told her I would check
23 with her before I completed, she said, you
24 know, the one thing -- she goes, I understand
25 what is going to happen with the sentence and

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1 everything. She said, the one thing I do want
2 to make sure happens with the sentence, though,
3 is that he is ordered to do some treatment,
4 because my interpretation on that based on
5 other conversations we had is there is still a
6 part of her that cares about this defendant,
7 which is not surprising considering that they
8 were involved in a relationship.

9 And I think the concern is that the
10 conduct that the jury found Mr. Aguirre guilty
11 of was -- it was very heinous. This is
12 supposed to be -- Mr. Aguirre is supposed to be
13 someone that was a higher ranking officer,
14 someone that was supposed to provide guidance
15 to soldiers that went through the NCO Academy.

16 Specifically, he was supposed to provide

17 guidance to this soldier, and he so betrayed
18 that trust, in addition to betraying the trust
19 of an intimate personal relationship, as well,
20 and I think that should be factored into a
21 sentence that he receives.

22 Of course, I don't need to remind the
23 Court, but for the purpose of the record and
24 the fact that there are other people present in
25 the courtroom, what the Court is setting today

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1 is in effect his minimum sentence. Count 3
2 falls under RCW 9.94A712, which places this
3 offense under the Indeterminate Sentencing
4 Board, so the maximum sentence will be life on
5 Count 3.

6 I'm also asking the Court to enter a
7 domestic violence protection order in this case
8 preventing Mr. Aguirre from having any and all
9 contact with Emily Laughman, and that is a
10 lifetime order. I have inserted a date of
11 December 31, 2099, because there does need to a
12 date for law enforcement entry of the order
13 into the system.

14 I'm also asking the Court to impose all
15 of the conditions as laid out by the Department
16 of Corrections in Appendix H of the presentence
17 investigation, and I'm asking that that entire
18 Appendix H be incorporated into the Judgment
19 and Sentence. And if I could have a moment?

20 And, your Honor, for the record, I did
21 speak with Emily again just to make sure there
22 wasn't anything additionally that she wanted
23 presented, and I don't believe at this time
24 there is, and so if the Court has any questions
25 for me, I'm happy to answer them. Otherwise,

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1 that is the State's recommendation and the
2 reasons for it.

3 THE COURT: Thank you. Mr. Steele?

4 MR. STEELE: Thank you, your Honor.

5 The prosecutor brings up remarks he considers
6 aggravating in part because Mr. Aguirre does
7 not show remorse for his actions, and the
8 simple fact of the matter is Mr. Aguirre still
9 maintains he did not commit this crime, and he
10 has a right to do that. The last time I
11 checked, we are not in the People's Republic of
12 China where the object of the criminal system
13 is for people to confess their crimes. He has
14 a right to maintain his innocence.

15 He had a chance to put his case in front
16 of the jury. The jury didn't agree with his
17 case, obviously, which is why we are in the
18 posture here, but the fact that he is still
19 maintaining his innocence should not be
20 considered as some aggravating factor in this
21 particular case or any case, for that matter,
22 as to why an enhanced sentence should be given.

23 The simple fact of the matter is that if
24 the suggestion is put out that there is some
25 abuse of trust here because the relationship

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1 that they had in the fact that he was one of
2 her instructors, but the point is it is also
3 very clear from the case that nothing got
4 started until after the course was over, until
5 after she was out of his chain of command and
6 was back with her unit, and that he had no
7 supervisory relationship to her at the time
8 this incident occurred.

9 The situation is it's also very clear
10 from the evidence that that was not some
11 situation where Mr. Aguirre somehow groomed her
12 or what have you to commit this crime.

13 This is a situation where the commencing
14 of the relationship, whatever that relationship
15 was, whether it was a full-blown dating
16 relationship or basically, if I can use a
17 fairly -- what I consider to be a very
18 distasteful phrase, friends with benefits, but
19 that is what was used in the trial, whatever it
20 was something that was mutually entered into
21 and not somehow Mr. Aguirre in any way using
22 his position to put her in that situation.

23 The problem that I have with the State's
24 case is that, quite frankly, I can't imagine a
25 rape two case that would not meet the criteria

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1 that counsel has mentioned in a lot of ways
2 concerning, because it's basically forcing
3 penetration on somebody by force, and the
4 situation is I, frankly, am at a loss to think
5 of a situation where somehow that would not be
6 traumatic, where somehow that would basically
7 not be brutal or what have you. So for that
8 reason, I'm asking the Court not to just simply
9 take that fact alone.

10 What I'm asking the Court to do is to go
11 with the lower end of the standard range. The
12 fact of the matter, as counsel points out, the
13 only thing we are essentially deciding here
14 today is what is essentially going to be his
15 minimum term. We are not talking about when he
16 gets out of prison. That is going to be
17 between him and the Department of Corrections
18 and the Indeterminate Sentence Board, but,
19 nonetheless, that is what we are here to
20 determine.

21 I'm asking the Court go with the low end
22 of the range. He has lost his military career.
23 He and his wife have been attempting
24 reconciliation. When he was convicted, that
25 came to an end, and he is now divorced. So his

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1 life is taking a major change, regardless of
2 what the Court does here, for the worse, and he
3 is going to be paying dearly for what he was
4 convicted of, regardless of which posture the
5 Court chooses to take. And based on that, I
6 don't see the need to go to the top end of the
7 range. I think the bottom end of the range
8 would be more appropriate.

9 The appeal attorney who is going to be
10 taking over, Ms. McCloud, also asked me to put
11 on the record, and I have notified counsel that
12 it is Mr. Aguirre's position, that the deadly
13 weapon enhancement on the Count 2 would
14 constitute a double jeopardy.

15 I'm well aware of my own experience that
16 the case law at this point would seem to go
17 against that position. However, it is his
18 appeal counsel's position, so I do want to put
19 that on the record that new case law in other
20 areas would mandate a new look at that
21 particular prior case law.

22 So I am asking the Court to at the very
23 least run the weapon enhancement penalties
24 concurrent. Again, primarily at this point
25 trying to make a record for later on appeal.

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1 You know, again, I understand what the past
2 case law is on that matter.

3 So I think another thing that needs to
4 be taken into consideration, your Honor, is the
5 fact that this is basically -- it appears to be
6 his first brush with the law, quite a brush,
7 admittedly, but it is his first brush with the
8 law. He has had a good and productive life up
9 to this point, as far as his military career
10 and as far as service to his country. I'm
11 asking the Court take those into consideration,
12 as well.

13 There is seldom a story that has only
14 one side to it, and I would suggest there are
15 several good things about Mr. Aguirre. That
16 needs to be taken into consideration, as well.

17 I believe my client will want to address
18 the Court. Also, First Sgt. Kelly is here, who
19 is also here, if allowed will address the Court
20 on his -- on how he was as far as his military
21 duties, the type of soldier he was, that sort
22 of thing, and I would ask the Court to
23 entertain those comments, as well.

24 But to wrap up my comments, I'm asking
25 the Court go with the bottom end of the range

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1 and again remind the Court the only thing we
2 are deciding is at what point does the
3 Indeterminate Sentence Review Board take over
4 to determine what time he will be released.

5 THE COURT: Do you have a specific

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6 suggestion, Mr. Steele?

7 MR. STEELE: Specific suggestion?

8 THE COURT: Uh-huh.

9 MR. STEELE: As to?

10 THE COURT: Months? I don't have your
11 paperwork in front of me. Do you have a
12 proposed order? I don't have it in front of
13 me.

14 MR. SKINDER: I do, your Honor. I'm
15 sorry.

16 MR. STEELE: I believe --

17 MR. SKINDER: That information is also
18 contained in the presentence investigation, as
19 well.

20 MR. STEELE: According to the
21 Department of Corrections, the low end of the
22 range is 24 months and 107. I believe they are
23 taking into consideration the enhancement. So
24 I'm asking for that amount minus the
25 enhancement.

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1 THE COURT: On the second count on
2 Count 3. Thank you. Mr. Aguirre, would you
3 like to speak now or would you like to speak
4 after you hear from the sergeant?

5 THE DEFENDANT: After First Sgt.
6 Kelly, ma'am, your Honor.

7 THE COURT: Mr. Skinder, you said you
8 have no objection to hearing from him?

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MR. SKINDER: I have no objection with

9
10 the first proposed witness.

11 THE COURT: You want to have him come
12 on up?

13 FIRST SGT. KELLY: Right here, your
14 Honor?

15 THE COURT: Yes, sir.

16 FIRST SGT. KELLY: Good morning, your
17 Honor.

18 THE COURT: Can you please tell me
19 your full name.

20 FIRST SGT. KELLY: Jeffrey Allen
21 Kelly.

22 THE COURT: And it is first sergeant?

23 FIRST SGT. KELLY: Yes, it is, ma'am.

24 THE COURT: Go ahead.

25 FIRST SGT. KELLY: First of all, I

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1 would like to say I'm here neutral. I have
2 always been. I have heard both sides of the
3 stories, and my opinion is not important. I
4 know that Emily's life and Sgt. Aguirre's life
5 have been effected and will be effected for a
6 long time and their families. Anyway, forgive
7 me. I'm a little nervous.

8 Something about Sgt. Aguirre and being a
9 soldier, first of all, to work in this NCO
10 Academy, you are hand-selected, your Honor.
11 Only 45 people out of all the soldiers at Ft.

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12 Lewis get to bear the badge, so we are all
13 hand-selected here.

14 Sgt. Aguirre's performance with me, as a
15 leader, he is very competent, a very loyal
16 subordinate. He has never got in any trouble
17 with me on duty or off duty. If I was going to
18 sum anything up, your Honor, I would say he was
19 always positive. A lot of soldiers complain
20 all day. Sgt. Aguirre would always look at the
21 bright side of things.

22 And, again, when this first happened, I
23 had to give him a no-contact order for
24 Ms. Emily. I had to do it in writing and this
25 was an army procedure, and I had to do it

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1 verbally, and I felt I had no reason to think
2 he would violate that.

3 I have -- we have had like Christmas
4 parties and stuff like that. I have seen him
5 interact with his children. He is a great and
6 loving parent. I have had numerous
7 conversations with his parents over this period
8 of time and physically met his brother. His
9 family is a very strong and loving family, and
10 they love and miss him very much. Thank you
11 for your time, your Honor.

12 THE COURT: Thank you, sir.
13 Mr. Steele, is there anybody else who wanted to
14 speak on behalf of Mr. Aguirre before we start?

15 MR. STEELE: My client would like to
16 address the Court, your Honor.

17 THE COURT: Mr. Aguirre, please go
18 ahead.

19 THE DEFENDANT: Do I come forward?

20 THE COURT: If you would like to you
21 may, or you can stand or sit, whatever works
22 best for you, sir.

23 THE DEFENDANT: All right. Well, I
24 it's tough to articulate exactly what I want to
25 say, especially after I seen my first sergeant

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1 come up here all jittery. I don't put blame,
2 and I'm not trying to place blame on anyone,
3 and I'm not trying to point fingers, and I know
4 that a lot of people would say that I would be
5 in a situation to be angry or upset or
6 vindictive towards people. I feel nothing
7 towards of that nature towards anyone.

8 I hear a lot of stuff that goes on, you
9 know, as being an inmate listening to stories
10 or just sitting in the courtroom and a lot of
11 things that weigh heavily on my soul and a
12 certain thing being called a rapist, being
13 called a, you know, a substandard soldier,
14 saying that I didn't do my duties to the most,
15 and I think of all the things that I heard in
16 the courtroom, the thing that hurt me the most
17 that I heard was that Ms. Laughman is not going

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to continue her military career.

19 And I think that is because I saw an
20 awesome leader inside her, and it wasn't the
21 fact that I was trying to say that she wasn't
22 tough enough, and, you know, that has all come
23 out earlier. That bothers me simply for the
24 fact that now the army is losing two good
25 soldiers, and in a time that we need every good

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1 soldier that we can, losing two is far worse
2 than anything that could have come out of here,
3 I feel.

4 I do feel upset, because I can clearly
5 see that -- I do feel remorse -- I'm sorry -- I
6 can clearly see that this has bothered
7 Ms. Laughman, and I think that the actions that
8 was taken on my part were, though completely
9 legal, probably were out not of the best moral
10 caliber.

11 Maybe I should have found a better way
12 to end the relationship, maybe not, but it is
13 on my -- it is on my heart, and I have been
14 thinking about what I wanted to say here for a
15 while, to say that if there are three things
16 that I'm most remorseful about, one is the fact
17 that my soldiers are overseas right now without
18 my leadership, and that is where I should be;
19 two, that I won't get to see my sons in the
20 next couple of years; and, three, that this

041207-0830-State v Aguirre
21 instance, this run-in, this meeting with me
22 with over 1,500 other soldiers has been so
23 positive.

24 I have gotten so many comments back,
25 hey, Sgt. Aguirre, I'm in Iraq. I'm doing

Sentencing--April 12, 2007

19

State of Washington vs. Daniel Marshall Aguirre

1 this. Hey, Sgt. Aguirre, I'm in Germany, I
2 just got promoted, even I'm in the special
3 Forces, and I have gotten all these letters
4 back from soldiers that I taught.

5 That this relationship with her and I
6 had made her life hard, and if I would have
7 known that now, believe me, I never would have
8 pursued it. Though everything inside the
9 relationship was purely consensual and legal, I
10 felt, if I would have known it would have done
11 this much devastation, I would have chose not
12 to pursue it at all.

13 And it was -- and it is a heart-felt --
14 I hope the best for her, even though she is not
15 going to be in the service, and that I think
16 that is it really, really -- I think that is --
17 that saddens me more than anything else. That
18 is all I got to say, your Honor.

19 THE COURT: Thank you, sir.

20 Mr. Skinder, does Ms. Laughman wish to say
21 anything?

22 MR. SKINDER: No, your Honor. Thank
23 you.

041207-0830-State v Aguirre
THE COURT: Anybody else? Mr. Steele,

24
25

anything else?

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20

State of Washington vs. Daniel Marshall Aguirre

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MR. STEELE: No, your Honor.

THE COURT: Okay.

MR. SKINDER: Your Honor, I just wanted one thing I left out that is contained in the presentence investigation, which is that for Count 3, it would be lifetime community custody, and as the Court saw on Count 2, that would be a period of community custody of 18 to 36 months.

THE COURT: Mr. Aguirre, at your trial you were found guilty of two of the three counts that were filed against you, Count 2, which was rape in the second degree, and Count 3, which was assault in the third degree, and a special verdict was returned on that matter because of the deadly weapon that the jury found that you had used.

Both of the convictions were classified as domestic violence offenses, and special verdicts were returned on those bases, as well.

I sat through the whole trial, as did counsel, and heard the evidence, and I'm going to make just a couple of comments before I make my ruling with respect to the sentence. I think some of the comments that Mr. Skinder is

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21

1 making today with respect to his position, the
2 State's position that the Court should impose
3 high end of the range reflect elements of the
4 offenses, and, in particular, there is already
5 going to be included an enhancement based on
6 the use of the deadly weapon, and I think that
7 that is included in the Legislature's
8 determination of the discretion that the Court
9 has in imposing a sentence on these matters.

10 The thing that I think is not
11 contemplated or wasn't contemplated by just the
12 standard sentence is the trust issue, and I
13 think there are two bases of trust violations
14 here in my view of the evidence and what I saw
15 at the trial.

16 One was the relationship issue, and the
17 second was your position as a superior officer,
18 and there was a lot of testimony, and still
19 there is information being presented today,
20 about how very important that is, and
21 Ms. Laughman looked up to you as her
22 supervisor, and you were in a position of
23 trust, and I think that that needs to be
24 accounted for in some way in the sentence here
25 today, because I think it is very significant.

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22

2 has indicated and as included in the
3 presentencing information, you have no criminal
4 history. You don't, as far as the Court can
5 see, there is nothing at all in your record
6 that is indicated in all of the information
7 that has been provided to the Court, including
8 the offender scoring that has been provided to
9 counsel and to the Court.

10 Mr. Steele, did you look through the
11 offender score? Were there any objections to
12 the calculations?

13 MR. STEELE: No, your Honor.

14 THE COURT: No, you didn't look, or,
15 no, you don't have any objections?

16 MR. STEELE: I don't have any
17 objections.

18 THE COURT: Okay. Thank you. I think
19 the Court is going to accept the score as
20 indicated then on the offender scoring sheet
21 that was provided to the Court for second
22 degree rape, which gives an offender score of
23 two. The standard range for that offense with
24 this score is 95 to 125 months.

25 With respect to Count 3, the assault in

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23

State of Washington vs. Daniel Marshall Aguirre

1 the second degree, it's the same offender
2 score, two points, and the standard range is 12
3 to 14 months in that matter, and then there is
4 a weapons enhancement that the Court believes

5 applies to both charges.

6 And just to note that for the record,
7 Mr. Steele, on both counts, I think it's
8 appropriate to go within the standard range.
9 Obviously, there is no request for any
10 exceptional sentence, and given all of the
11 factors, the Court is going to go with the
12 recommendation in the presentencing
13 investigation report that was filed with the
14 Court on both counts.

15 I am just going to go through Count 2.
16 The Court is accepting the recommendation, as I
17 indicated. That will be a total then of
18 14 months plus the 12-month enhancement for a
19 total of 26 months on Count 2.

20 With respect to Count 3, the maximum
21 sentence on that count as indicated by counsel
22 is life. The Court is again going to impose
23 the standard range, and on that one the high
24 end of the standard range, the 125 months, plus
25 the 12 months weapons enhancement, for a total

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24

State of Washington vs. Daniel Marshall Aguirre

1 of 137 months on that matter.

2 The Court further is going to impose
3 essentially what is a lifetime domestic
4 violence no-contact order, but it will have the
5 end date as indicated by the State. The Court
6 is also imposing and incorporating the
7 conditions that were outlined in Appendix H in

8 the presentencing report. I think I covered
9 everything that I intend to cover.

10 THE CLERK: Community custody and
11 costs?

12 THE COURT: There was a cost bill
13 submitted Mr. Skinder. You haven't signed it,
14 but I will impose costs.

15 MR. SKINDER: Thank you.

16 THE COURT: Do you want to show that
17 to Mr. Steele?

18 MR. SKINDER: I will, your Honor, and
19 then I believe the Court is mandated to impose
20 a \$500 crime victim's assessment and also a
21 hundred dollar DNA fee. In addition, the Court
22 typically would order a \$200 criminal filing
23 fee, and I am also asking the Court to reserve
24 regarding the issue of restitution.

25 THE COURT: Mr. Steele, do you want to

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State of Washington vs. Daniel Marshall Aguirre

1 make any comments about those financial issues
2 before the Court makes a ruling on that?

3 MR. STEELE: Well, as far as the cost,
4 I think my client at this point it is safe to
5 say is going to be indigent for a very long
6 period of time.

7 THE COURT: And the Court signed an
8 indigency order yesterday or the other day, as
9 well.

10 MR. STEELE: Right. So I would ask
Page 23

11 the Court to waive any costs that the Court is
12 able to do so, because, obviously, his career
13 is gone when he does get out.

14 If and when he gets out, he is going to
15 be starting all over at a pretty late stage in
16 life, so I don't see the point of saddling him
17 with any more costs than is absolutely
18 necessary. I understand some costs are
19 required like the crime victim and that sort of
20 thing.

21 THE COURT: The Court is going to
22 reserve the issue of restitution. Certainly,
23 it would be appropriate if there are costs for
24 counseling or other matters that the victim
25 needs to pursue, those should be addressed at

Sentencing--April 12, 2007

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State of Washington vs. Daniel Marshall Aguirre

1 an appropriate time.

2 The Court is going to waive the filing
3 fee. I'm not going to waive the DNA fee or the
4 crime victim fee in this matter. Are there any
5 other issues in the sentencing before I advise
6 Mr. Aguirre of his rights to appeal?

7 MR. SKINDER: I don't believe so, your
8 Honor.

9 THE COURT: Mr. Steele, any other
10 matters you wish the Court to address at this
11 time?

12 MR. STEELE: No, your Honor.

13 THE COURT: Mr. Aguirre, you do have
Page 24

14 the right to appeal your conviction. You have
15 the right to appeal any sentence that was
16 imposed outside of the standard range, and that
17 didn't happen in this matter.

18 Unless you file your Notice of Appeal
19 within 30 days after today's date, which is
20 when I'm going to sign the Judgment and
21 Sentence order when it is presented to the
22 Court, your right to appeal will be irrevocably
23 waived.

24 If you have no attorney, which you do, I
25 believe Ms. McCloud has entered a Notice of

Sentencing--April 12, 2007

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State of Washington vs. Daniel Marshall Aguirre

1 Appearance for the appeal, but if you do not,
2 the Court would supply you with notice to file
3 your appeal and make sure that gets filed for
4 you, if you are not able to do that. If are
5 you not able to afford counsel for your appeal,
6 the Court would appoint counsel at no cost to
7 you for purpose of pursuing your appeal. The
8 Court is going to sign the cost bill that was
9 submitted.

10 MR. STEELE: My understanding is, your
11 Honor, after today then the substitution of
12 counsel will be considered in effect, so
13 anything else needs to sent to the new
14 attorney.

15 THE COURT: That is my understanding.

16 MR. STEELE: That includes the

17 restitution hearing, if one is ever set.

18 MR. SKINDER: That is fine.

19 THE COURT: I think so. If your
20 withdrawal is effective today's date or
21 tomorrow's date, then I don't think you have
22 any further obligation with respect to
23 Mr. Aguirre. That would be between the two of
24 you. Mr. Steele, anything else?

25 MR. STEELE: I was just talking to my

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State of Washington vs. Daniel Marshall Aguirre

1 client about if he wanted to waive his presence
2 for any restitution hearing. He is indicating
3 he would like to waive.

4 THE COURT: That will be noted for the
5 record.

6 MR. SKINDER: And I have checked that
7 box under paragraph 5(4), and it would just
8 need to be initialed by the defendant.

9 Your Honor, I'm handing up a copy of
10 Appendix H after showing counsel. It does need
11 to be signed by the Court, and as stated
12 regarding the Judgment and Sentence, I used
13 language to incorporate those conditions into
14 the body of the Judgment and Sentence.

15 THE COURT: Mr. Steele, did you go
16 through this appendix with Mr. Aguirre?

17 MR. STEELE: Not specifically, your
18 Honor. I can.

19 THE COURT: Okay. Well, the Court can
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20 do it if --

21

22 [A brief discussion off the record]

23

24 THE COURT: Mr. Aguirre and Mr. Steele

25 and Mr. Skinder, I just want to review on the

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State of Washington vs. Daniel Marshall Aguirre

1 record that, Mr. Steele, you have reviewed the
2 Judgment and Sentence on in the Appendix H with
3 respect to community placement custody with
4 your client.

5 MR. STEELE: I'm going through the
6 Judgment and Sentence, and I'm reviewing it
7 with him now as we speak, your Honor.

8 THE COURT: Okay. I thought you were
9 finished, so you keep going.

10

11 [A brief discussion off the record]

12

13 THE COURT: Mr. Aguirre, the Court is
14 signing at this time the order prohibiting
15 contact, no-contact order; and I want to just
16 advise you and remind you that if you do
17 violate this order, it's a separate criminal
18 violation, and you will subject to arrest on
19 that matter, as well, if there were any
20 violation.

21 Can I have the Judgment and Sentence
22 form? Mr. Aguirre, as part of the sentence

23 today, you will be required to provide a DNA
24 sample. There are requirements on the
25 community custody provision under Count 2 that

Sentencing--April 12, 2007

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State of Washington vs. Daniel Marshall Aguirre

1 I believe your attorney just went over with
2 you; is that correct, Mr. Steele?

3 MR. STEELE: Yes.

4 THE COURT: And that includes the
5 no-contact provisions, participation in sexual
6 deviancy treatment, participating in an
7 evaluation for treatment for substance abuse,
8 mental health, anger management, and complying
9 with any requirements that might be imposed
10 after the evaluation.

11 I already indicate that the Court was
12 incorporating the requirements of Appendix H.
13 You have waived your right to be present at any
14 restitution hearing, and the Court has --
15 excuse me -- we are not dealing with the issue
16 of restitution today. That matter is going to
17 be reserved for further hearing, if necessary.

18 Because of the convictions, you are not
19 going to be allowed to own, possess, or have
20 under your control any firearm, unless the
21 court later restores your right to do so.

22 You also will be required to register as
23 a sex offender pursuant to the requirements of
24 the statute. I think I covered everything. I
25 have noted on the form that you signed or

Sentencing--April 12, 2007

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State of Washington vs. Daniel Marshall Aguirre

1 initialed or signed the advisement with respect
2 to your voting rights. By virtue of this
3 conviction, you have lost your right to vote,
4 and the voting rights statement has information
5 on that on how that might be returned to you at
6 a later date, and the Court is going to sign
7 the Judgment and Sentence order now in your
8 presence in open court. Thank you. Is that
9 everything, counsel?

10 MR. SKINDER: Yes, your Honor.

11 MR. STEELE: Yes, your Honor.

12 THE COURT: Good luck, ma'am. Good
13 luck, sir. We will be in recess.

14

15 [PROCEEDINGS ADJOURNED]

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Sentencing--April 12, 2007

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I, SONYA L. MESSING, CCR, Official Reporter of the Superior Court of the State of Washington, in and for the County of Thurston, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter, as designated by Counsel to be included in the transcript, and that the transcript is a true and complete record of my stenographic notes.

Dated this the day of June, 2007.

SONYA L. MESSING, CCR
Official Court Reporter
Certificate No. 2112

APPENDIX L

PREOPERATIVE DX: Posterior horn medial meniscus tear.

POSTOPERATIVE DX:

1. Displaced posterior horn medial meniscus tear.
2. Grade 3 chondromalacia, lateral compartment.

PROCEDURE(S) PERFORMED:

1. Examination under anesthesia.
2. Arthroscopic debridement/partial meniscectomy, posterior horn medial meniscus.

SURGEON: CPT J. Eichinger

ASSISTANTS: MAJ J. DeVine

STAFF SUPERVISOR: LTC E. Arrington

ANESTHETIST:

DATE OF OPERATION: 30 Sep 2005

ANESTHESIA: General endotracheal anesthesia.

MATERIAL TO LAB:

INDICATIONS: This is a 25-year-old, active duty SSG, 11B with a history of multiple injuries including an ACL reconstruction to his right knee back in 2000 for an injury sustained at ranger school. Most recently he reports pain, popping and complains of some instability injuries during a jump from a vehicle and helicopter during deployment. He also had repeated episodes of swelling since his surgery. Physical examination reveals a lack of full extension, not able to gain 0 degrees, but is approximately 5 degrees. He also has a negative anterior drawer and a negative Lachman. He has a somewhat equivocal pivot shift. He has medial joint line tenderness and he has a positive McMurray. The assessment and plan was determined that it would be in the patient's best interest to take this knee to arthroscopy and perform excision versus repair of this damage to the meniscus. The patient was in agreement with this.

OPERATIVE FINDINGS: A displaced complex posterior horn medial meniscus tear and grade 3 chondromalacia in the lateral compartment to include the lateral femoral condyle and the lateral tibial plateau. An intact ACL graft from previous reconstruction.

DESCRIPTION OF PROCEDURE: After the patient was positively identified in the preoperative holding area and the correct right lower extremity was marked, the patient was brought back to the operating room where he was placed in the supine position. He was given general endotracheal anesthetic by the anesthesia service.

Original on Record

<input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 504, 505 & 506)	<input checked="" type="checkbox"/> OPERATION REPORT (SF 516)	NAME AGUIRRE, DANIEL M	
<input type="checkbox"/> CONSULTATION SHEET (SF 513)	<input type="checkbox"/> NARRATIVE SUMMARY (SF 502)	REGISTER NO. APV	SSN
<input type="checkbox"/> CHRON RECORD OF MEDICAL CARE (SF 600)	<input type="checkbox"/> AUTOPSY PROTOCOL	UNIT Orthopaedics	
<input type="checkbox"/> PROGRESS NOTE (SF 509)	<input type="checkbox"/>	DATE DICTATED 09/30/2005	DATE TYPED 10/03/2005 11:45:54

50275-102

AUTOMATED OPTIONAL FORM 275-E(12-77)

MEDICAL RECORD REPORT
MADIGAN ARMY MEDICAL CENTER

Prescribed by GSA and 1CMR
FIRM (41 CFR) 201-45.505

An examination under anesthesia was performed revealing a stable knee to both varus/valgus stresses around 30 degrees. Anterior and posterior drawer were negative as well as the Lachman. There was no pivot glide appreciated. The patient was prepped and draped in the usual sterile arthroscopic fashion.

Two parapatellar portals were created and the arthroscopic instruments were placed into the knee providing evaluation of the knee. An evaluation of the medial compartment revealed a complex tear with a displaced posterior horn of the medial meniscus protruding into the center of the knee. This extended from the detached posterior horn origin all the way around to approximately two-thirds of the entire medial meniscus. After this was identified, a straight biter was utilized through one of the arthroscopy portals to cut off this displaced portion as it was in a nonrepairable state. Once this was done, it was removed via one of the arthroscopy portals.

Attention was turned to the posterior horn of the medial meniscus. A free portion still attached to the posterior horn was freed. This portion was debrided back using a combination of straight biters and a 3.5 full radius shaver. Finally, the remainder of the medial meniscus was probed and revealed a stable rim. However, an essentially complete meniscectomy was performed of the posterior horn of the medial meniscus. Evaluation of the notch revealed an intact ACL graft from a previous reconstruction and no evidence of frank tears or loosening was noted. Evaluation of the lateral compartment revealed severe arthritic changes in both the lateral femoral condyle as well as the tibial plateau, revealing grade 3 chondromalacia. Otherwise, the lateral meniscus was completely intact with no rents, no tears and no lesions. Additionally, evaluation of the patellofemoral joint revealed no significant articular changes or damage or degeneration.

POSTOPERATIVE PLAN: He will be weightbearing as tolerated. He will follow up in approximately 10 to 14 days in the orthopaedic clinic for suture removal and wound check. He will participate in an aggressive physical therapy program to gain strength and full range of motion.

JOSEF K. EICHINGER, CPT, MC
 MADIGAN ARMY MEDICAL CTR, TACOMA, WA
 JKE/fjm/fjm
 Voice Job:202826, Text Document: 232104

EDWARD D. ARRINGTON, LTC, MC
 STAFF SUPERVISOR
 DATE SIGNED: _____

Verified by JOSEF K. EICHINGER, CPT, MC
 10/03/2005 19:18:09

Original on Record

<input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 504, 505 & 506)	<input checked="" type="checkbox"/> OPERATION REPORT (SF 516)	NAME AGUIRRE, DANIEL M	
<input type="checkbox"/> CONSULTATION SHEET (SF 513)	<input type="checkbox"/> NARRATIVE SUMMARY (SF 502)	REGISTER NO. APV	SSN
<input type="checkbox"/> CHRON RECORD OF MEDICAL CARE (SF 600)	<input type="checkbox"/> AUTOPSY PROTOCOL	UNIT Orthopaedics	
<input type="checkbox"/> PROGRESS NOTE (SF 509)	<input type="checkbox"/>	DATE DICTATED 09/30/2005	DATE TYPED 10/03/2005 11:45:54

50275-102

Original on Record

<input type="checkbox"/> HISTORY & PHYSICAL EXAMINATION (SF 504, 505 & 506)	<input checked="" type="checkbox"/> OPERATION REPORT (SF 516)	NAME AGUIRRE, DANIEL M	
<input type="checkbox"/> CONSULTATION SHEET (SF 513)	<input type="checkbox"/> NARRATIVE SUMMARY (SF 502)	REGISTER NO. APV	SSN
<input type="checkbox"/> CHRON RECORD OF MEDICAL CARE (SF 600)	<input type="checkbox"/> AUTOPSY PROTOCOL	UNIT Orthopaedics	
<input type="checkbox"/> PROGRESS NOTE (SF 509)	<input type="checkbox"/>	DATE DICTATED 09/30/2005	DATE TYPED 10/03/2005 11:45:54

50275-102

AUTOMATED OPTIONAL FORM 275-E(12-77)

MEDICAL RECORD REPORT
MADIGAN ARMY MEDICAL CENTER

Prescribed by GSA and ICMR
FIRM (41 CFR) 201-45.505

APPENDIX M

DEPARTMENT OF THE ARMY
C DET, 22d PERSONNEL SERVICES BATTALION
FORT LEWIS, WASHINGTON 98433-9518

ORDERS 231-019

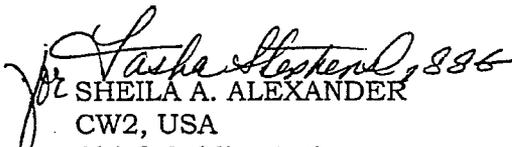
19 August 2003

The Secretary of the Army has reposed special trust and confidence in the patriotism, valor, fidelity, and professional excellence of **Daniel M. Aguirre**. In view of these qualities and his demonstrated leadership potential and dedicated service to the U.S. Army, he is, therefore, promoted from SPC to **SGT**. MOS **11B200000** is awarded as his primary MOS effective **14 August 2003**. Promotion is effective **14 August 2003** with a date of rank of **14 August 2003**. Promotion is not valid and it will be revoked if he is not in a promotable status on the effective date of promotion. The authority for this promotion is paragraph 3-37e, AR 600-8-19, and HQDA PERSCOM Cut-off scores for 1 June 2003 dated 15 May 2003.

Additional Instructions: Newly promoted Sergeants must receive an updated DD Form 2A from the I.D. Card facility within 30 days of the promotion effective date. Promotion was delayed due to NCOES requirement.

Format: 302

FOR THE COMMANDER:


SHEILA A. ALEXANDER
CW2, USA
Chief, Soldier Actions

DISTRIBUTION:

AFZH-PGF-C (1)
Cdr, USAEREC, ATTN: PCRE-FS
8899 E. 56th Street, Indianapolis, IN 46249-5301 (1)
Cdr, 3d Bde, 2d Id (1)
Cdr, 1/23 Inf Bn (1)
SPC Aguirre, 3 Co, 1/23 Inf Bn (3)

APPENDIX N

DEPARTMENT OF THE ARMY
Task Force Bravo Detachment
22d Personnel Services Battalion, Fort Lewis, WA 98433 (Forward)
Mosul Army Airfield, Mosul, Iraq
APO AE 09334

ORDERS 260-21

16 September 2004

The Secretary of the Army has reposed special trust and confidence in the patriotism, valor, fidelity, and professional excellence of **Daniel M. Aguirre**. In view of these qualities and his demonstrated leadership potential and dedicated service to the U.S. Army, he is, therefore, promoted from SGT to SSG. MOS 11B300000 is awarded as his primary MOS effective **1 October 2004** with a date of rank of **1 October 2004**. Promotion is not valid and it will be revoked if he is not in a promotable status on the effective date of promotion. The authority for this promotion is paragraph 3-34e. AR 600-8-19, and HQDA promotion Cut-off scores for 1 October 2004 dated 13 September 2004.

Additional Instructions: (A) Newly promoted Staff Sergeants must receive an updated DD Form 2A from the I.D. Card facility within 30 days of the promotion effective date. (B) IAW AR 640-30, Soldiers promoted to SSG are required to take official photograph within 60 days of promotion effective date.

Format: 320

FOR THE COMMANDER:



HUI J. KIM
CW3, AG
Chief, Personnel Services Division (Fwd)

DISTRIBUTION:
AFZH-PGF-C (1)
Cdr, USAEREC, ATTN: PCRE-FS,
8899 E, 56th St, Indianapolis, IN 46249-5301 (1)
Cdr, 1-23rd Inf Regt (1)
Cdr, HHC, 1-23rd Inf Regt (1)
SGT Aguirre HHC, 1-23rd Inf Regt (3)

APPENDIX O

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) AGUIRRE, DANIEL MARSHALL		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY NUMBER			
4a. GRADE, RATE OR RANK PV1		b. PAY GRADE E01		5. DATE OF BIRTH (YYYYMMDD)			
7a. PLACE OF ENTRY INTO ACTIVE DUTY KANSAS CITY, MISSOURI		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)					
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND USA NCO ACD, I CORPS FC			b. STATION WHERE SEPARATED FORT LEWIS, WA 98433-5000				
9. COMMAND TO WHICH TRANSFERRED N/A			10. SGLI COVERAGE		NONE		
			AMOUNT: \$400,000.00				
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 11B18 INFANTRYMAN - 7 YRS 3 MOS//NOTHING FOLLOWS		12. RECORD OF SERVICE		YEAR(S)	MONTH(S)	DAY(S)	
		a. DATE ENTERED AD THIS PERIOD		2000	08	16	
		b. SEPARATION DATE THIS PERIOD		2007	12	07	
		c. NET ACTIVE SERVICE THIS PERIOD		0006	01	01	
		d. TOTAL PRIOR ACTIVE SERVICE		0000	04	08	
		e. TOTAL PRIOR INACTIVE SERVICE		0000	08	03	
		f. FOREIGN SERVICE		0000	11	19	
		g. SEA SERVICE		0000	00	00	
h. EFFECTIVE DATE OF PAY GRADE		2007	11	30			
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) PURPLE HEART//ARMY COMMENDATION MEDAL//ARMY ACHIEVEMENT MEDAL (2ND AWARD)//ARMY GOOD CONDUCT MEDAL (2ND AWARD)//NATIONAL DEFENSE SERVICE MEDAL//GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL//GLOBAL WAR ON TERRORISM SERVICE MEDAL//OVERSEAS SERVICE RIBBON//COMBAT INFANTRYMAN BADGE//EXPERT//CONT IN BLOCK 18			14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) NONE//NOTHING FOLLOWS				
15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM				YES	X	NO	
b. HIGH SCHOOL GRADUATE OR EQUIVALENT			X	YES		NO	
16. DAYS ACCRUED LEAVE PAID NA		17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION			YES	NO	
						X	
18. REMARKS CONTINUOUS HONORABLE ACTIVE SERVICE: 20000816-20060518//IMMEDIATE REENLISTMENTS THIS PERIOD -- 20021212-20060518; 20060519-20071207//SELECTIVE REENLISTMENT BONUS PAID: \$20989.30, 20060519//SERVED IN A DESIGNATED IMMINENT DANGER PAY AREA//SERVICE IN IRAQ 20031107-20041022. //MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//ITEM 11: SPECIAL QUALIFICATION IDENTIFIER 8 (INSTRUCTOR)//OVERSEAS SERVICE BAR (2)//CONT FROM BLOCK 13: INFANTRYMAN BADGE//NOTHING FOLLOWS							
The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.							
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code)			b. NEAREST RELATIVE (Name and address - include ZIP Code)				
20. MEMBER REQUESTS COPY 6 BE SENT TO		KS	DIRECTOR OF VETERANS AFFAIRS		X	YES	NO
21. SIGNATURE OF MEMBER BEING SEPARATED		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)					
SOLDIER NOT AVAILABLE TO SIGN		LUCIAN W MCLEMORE, GS07, LEAD HUMAN RESOURCE ASSISTANT					

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)			
23. TYPE OF SEPARATION DISCHARGE		24. CHARACTER OF SERVICE (Include upgrades) UNDER OTHER THAN HONORABLE CONDITIONS	
25. SEPARATION AUTHORITY AR 635-200, PARA 14-12C		26. SEPARATION CODE JKQ	27. REENTRY CODE 3
28. NARRATIVE REASON FOR SEPARATION MISCONDUCT, (SERIOUS OFFENSE)			
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) UNDER 10 USC 972: 20060917-20071207			30. MEMBER REQUESTS COPY 4 (Initials) YES

APPENDIX P

To whom it may concern:

8-18-07

I would like the separation authority to consider the following information.

My service overseas includes a tour in Iraq. I received a purple heart for wounds sustained in combat. I was nominated for a Bronze star which was down graded to a A.R.COM. I was deployed with the first Stryker Unit 1-23 Ins. I served as a Team leader in a Rifle platoon for four months then was moved to H.H.C to be a A.T.L and Team leader in the Recon Sniper section. I was promoted to Staff Sergeant after accepting the job in the Recon unit. I was also awarded a C.I.R for actions in theater. From the time I joined the Army it took me four years to become a E-6.

My service stateside also warrants your attention. I entered the army with a G.I score of 111. I received two A.A.M.s and earned a E.I.R. I was on my way to successfully completing Ranger School when I was injured and medical discharged. I am total Army Instructor qualified and also Small Group leader Certified and have instructed roughly 1000 new N.C.O out P.h.D.C.

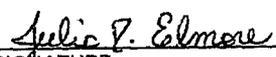
Personally I am the father of three children my father is a Ret. 1st Lt he has three purple hearts and the distinguished service cross My Mother is a Ret O-3 in the medical field. Also my brother served with the 1st Cav and was discharged honorable.

Based on this record of service, I request a general discharge. I believe my service to the Army and my country warrants it.

Daniel Marshall Agnew
Staff Sergeant U.S.A

APPENDIX Q

APPENDIX R

SERVICE SCHOOL ACADEMIC EVALUATION REPORT				DATE	
For use of this form, see AR 623-1; the proponent agency is MILPERCEN.				9 AUG 06	
1. LAST NAME - FIRST NAME - MIDDLE INITIAL AGUIRRE, DANIEL M.			3. GRADE SSG	4. BR	5. SPECIALTY/MOSC 11B38
6. COURSE TITLE BASIC NCO COURSE PHASE II, CLASS 7-06			7. NAME OF SCHOOL Henry Caro NCOA, Fort Benning, GA 31905		8. COMP RA
9. TYPE OF REPORT <input type="checkbox"/> RESIDENT <input type="checkbox"/> NONRESIDENT		10. PERIOD OF REPORT (Year, month, day) From: 06 06 18 Thru: 06 08 09		11. DURATION OF COURSE (Year, month, day) From: 06 06 19 Thru: 06 08 09	
12. EXPLANATION OF NONRATED PERIODS					
13. PERFORMANCE SUMMARY			14. DEMONSTRATED ABILITIES		
*a. <input type="checkbox"/> EXCEEDED COURSE STANDARDS <i>(Limited to 20% of class enrollment)</i> b. <input checked="" type="checkbox"/> ACHIEVED COURSE STANDARDS *c. <input type="checkbox"/> MARGINALLY ACHIEVED COURSE STANDARDS *d. <input type="checkbox"/> FAILED TO ACHIEVE COURSE STANDARDS *Rating must be supported by comments in ITEM 16.			a. WRITTEN COMMUNICATION <input checked="" type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR b. ORAL COMMUNICATION <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input checked="" type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR c. LEADERSHIP SKILLS <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input checked="" type="checkbox"/> SUPERIOR d. CONTRIBUTION TO GROUP WORK <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input checked="" type="checkbox"/> SUPERIOR e. EVALUATION OF STUDENT'S RESEARCH ABILITY <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input checked="" type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR (SUPERIOR/UNSAT rating must be supported by comments in ITEM 16)		
15. HAS THE STUDENT DEMONSTRATED THE ACADEMIC POTENTIAL FOR SELECTION TO HIGHER LEVEL SCHOOLING/TRAINING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A (A "NO" response must be supported by comments in ITEM 16)					
16. COMMENTS (This item is intended to obtain a word picture of each student that will accurately and completely portray academic performance, intellectual qualities, and communication skills and abilities. The narrative should also discuss broader aspects of the student's potential, leadership capabilities, moral and overall professional qualities. In particular, comments should be made if the student failed to respond to recommendations for improving academic or personal affairs)					
ITEM 14b: <input type="checkbox"/> skilled communicator who actively participated in classroom discussions <input type="checkbox"/> communicated honestly and openly with peers and cadre					
ITEM 14c: <input type="checkbox"/> projected confidence, authority and enthusiasm during leadership evaluation <input type="checkbox"/> demonstrated a highly developed sense of responsibility					
ITEM 14d: <input type="checkbox"/> offered valuable information during small group discussions <input type="checkbox"/> worked effectively with others to ensure mission accomplishment					
ITEM 14e: <input type="checkbox"/> displayed satisfactory research ability					
PASS 0606 70/183 YES					
17. AUTHENTICATION					
a. TYPED NAME, GRADE, BRANCH, AND TITLE OF PREPARING OFFICER JULIO D. ELMORE, SSG, USA SMALL GROUP LEADER			SIGNATURE 		
b. TYPED NAME, GRADE, BRANCH, AND TITLE OF REVIEWING OFFICER TONY J. WINTERFELD, SGM, USA ASSISTANT COMMANDANT			SIGNATURE 		
18. MILITARY PERSONNEL OFFICER					
a. FORWARDING ADDRESS (Rated student) NCOA, WLC FORT LEWIS, WA 98433			b. DISTRIBUTION <input checked="" type="checkbox"/> STUDENT <input checked="" type="checkbox"/> UNIT CDR (P/B NCOES only) <input checked="" type="checkbox"/> STUDENT'S OFFICIAL MILITARY RECORDS		

APPENDIX S



DEPARTMENT OF THE ARMY
MADIGAN ARMY MEDICAL CENTER
TACOMA, WASHINGTON 98431-110

REPLY TO
ATTENTION OF:

18 August 2005

RE: SSG Aguirre

SSG Aguirre was a patient of mine while deployed to Iraq in support of OIF. I was Battalion Surgeon for 1/23 IN, 2ID. SSG Aguirre was injured during combat operations while in support of OIF in March 2004. SSG sustained injuries to his right knee with presumed diagnosis of internal derangement with subsequent work up to include in theater physical therapy at our FSB.

This injury was sustained while in combat in Mosul, Iraq during fire-fight. SSG Aguirre was then sent to Battalion Aid Stationed, where he was examined by myself, and subsequent Orthopedic Surgical evaluation at the CSH. SSG Aguirre decided to stay in theater in support of mission rather than undergo possible surgical correction, as was recommended by Orthopedic Surgeon. Orthopedic Surgeon at CSH, MAJ Hunt, agreed to this plan, as SSG would not do permanent damage to his knee, yet would not be pain free.

It was recommended that SSG Aguirre report to BAS once we returned to CONUS, which he did. SSG Aguirre has been completely compliant with medical care and recommendations.

Any questions regarding this matter, please contact me at (253) 968-0770 or colin.a.linehan@us.army.mil.

Colin A. Linehan, MD
MAJ, MC, USA
Staff Physician

APPENDIX T

THURSTON COUNTY CORRECTIONS FACILITY
 PROGRESS NOTES

DATE/TIME

1/22/06 (Cont) Sleep watch X 3 days @ 11:00 PM
 1350

12/15 Anthony D shoes because of Bar + pins
 in leg % busy

01/07 S. c/o cold sxs X 4 days. c/o cough - stuffy nose

0950 Denies any N/V/D. c/o fatigue
 G. NAD - well appearing. HEENT ⊖ Lungs CTA
 Heart RR.

A URI

P. See flow chart

2/26/07 S: On work release X 3 days

Adiant. Says he does not
 sleep - still has nightmares

Eating 3 meals/day Bowels

regular but ↑ in stress. Draws some
 of time Exercises 2x/wk. Thoughts

self harm but no plan or intent
 O: Direct eye contact Blunted affect

A: On-going depression

P: DC sertraline

Start Metazapine ^{Mirtazapine} 30mg qd HS

RTC looks good at ARNP

Note: 2/26/07
 2/26/07
 2/26/07

ALLERGIES

Sulfa

NAME

Aguiar Daniel

DOB

ID#

APPENDIX U

MEDICAL RECORD

CHRONOLOGICAL RECORD OF MEDICAL CARE

DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
05 SEP 04 BP 136/83 P 111	23 y/o ♂ CC: LACERATION TO (L) ARM. PT STATES HE WAS HIT WITH SHRAPNEL WHILE ON A CONVOY. PT STATES HE PULLED SOMETHING OUT OF HIS WOUND BEFORE FIRST BANDAIDING OF IT.
POX 97% R 14 CHLOR. MEGDS (73) ALL (SULFAL GANGS)	O: GEN A+W, WNWD, NAD, VSS MULTIPLE LACERATIONS ON (L) FOREARM BLEEDING CONTROLLED (-) EDEMA.
PMHx	S: Lx as above. O: Gen-wound ♂, VSS = P 111. ↓ to 98. (L) forearm = two linear lac Area irrigated = NS
X-mj: of shrapnel	Lac. approximated = 8 sutures. (4-0 Nylon) Pt tolerated the procedure well A: s/p Lac. repair. 2° shrapnel. P: ① keep area dry & aseptic, then open to air ② Bacitracin oint BZD ③ Flu in 7-10 days. sover PRN [Signature]

HOSPITAL OR MEDICAL FACILITY	STATUS	DEPART./SERVICE	RECORDS MAINTAINED AT
SPONSOR'S NAME	SSN/ID NO.	RELATIONSHIP TO SPONSOR	

PATIENT'S IDENTIFICATION: (For typed or written entries, give: Name - last, first, middle; ID No or SSN; Sex; Date of Birth; Rank/Grade.)	REGISTER NO.	WARD NO.
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AGUIRRE, DANIEL M
HAC 2/23 INF

APPENDIX

V

Name: AGUIRE, DANIEL
Thurston County Jail

Date: 09/27/06

Allergies: Sulfa.

Medications: Sertraline.

History of Present Illness: This is a 26-year-old Hispanic/American Indian male who entered jail on 09/16/06. He thinks he will be here until mid-October. He is seen in the clinic about remorse at seeing his friends killed in Iraq. He has been back 18 months and is on sertraline 50 mg for 4½ or 5 months.

Past Psychiatric Illness: He has had counseling and sleep techniques for coming back from Iraq and also debriefing. He is on sertraline and is compliant. He thinks there is probably nothing wrong with him. Suicide attempts: No suicide attempts or suicidal ideation. Abuse: He denies sexual, physical, and emotional abuse. No psychiatric hospitalizations. No hallucinations or delusions. Family psychiatric history: Denied. Family substance abuse: Denied. Traumatic event: He relives experiences in Iraq. He dreams about them. When he has bad dreams, he wakes up and stays up. He says, "It doesn't bother me too much." He did not set fires or kill or torture animals as a child.

General Medical History: Illnesses or surgeries: No major illnesses. He had a tonsillectomy. He had a head injury when shrapnel hit him in the head and he had a slight concussion. Earliest memory is at age 3 or 4. Mother did not use alcohol or drugs while pregnant with inmate. Vital signs: BP is 109/56. Pulse is 68. Weight is 204 pounds. He estimates his height at 5 feet 11 inches. BMI is 28. Family medical history: . Sleep: 3½ to 4 hours a night. Appetite: 3 meals a day. Energy: Less. Sexual desire: The same as other guys. Bowel: Okay. Urination: Without problems. Pain: None.

AIMS test: Negative.

Substance Use History: Treatment: Denied. Nicotine: He chews when he is on field exercises but not regularly. Alcohol: He drinks socially about twice a week. He does not get drunk. No DUIs. Marijuana: He tried it when he was very young, none since. Cocaine: Denied. Methamphetamine: Denied. Opioids: Denied. Hallucinogens: Denied. Huffing: Denied. Ecstasy: Denied. Formaldehyde: Denied. Prescription drug use and abuse: Denied.

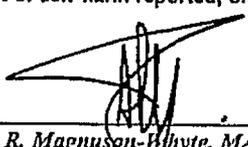
Psychosocial History: He obtained an associate degree while he was in the Army, and he is working on a B.S. in education. He lives with an Army friend and has 3 fish. Criminal justice system: He has been in jail one time, never in prison, and never in juvenile detention. Social service agency involvement: VA. He has 3 children with his wife prior to getting a divorce. He has a 5-year-old daughter, 3-year-old son, and a 2-year-old son. No suicides in the family. He has been in the Army for 7 years.

Mental Status Exam: Inmate is oriented x3. He remembers 3 of 3 unrelated items after 5 minutes. He spells WORLD forward and backward. He is unable to do serial 7s. He is abstract with proverbs. He has good verbalized social judgment. He denies ideation to harm others. Eye contact is direct. Affect: Full range. Fund of general information: He is not sure of the current governor and mentioned Gary Locke. He does know 5 of the last 5 Presidents. He does have some difficulty concentrating. Mood: On a scale of zero to 10, with 10 being the best, it is 4.

Taurston County Corrections Facility Mental Health Program

Name: Daniel Aguirre
Number:

Social Security Number:
Date of Birth:

<p style="text-align: center;"><u>Affect</u></p> <input checked="" type="checkbox"/> Full Range <input type="checkbox"/> Constricted <input type="checkbox"/> Blunted <input type="checkbox"/> Flat <input type="checkbox"/> Labile <input type="checkbox"/> Congruent w/Ψ <input type="checkbox"/> Incongruent w/Ψ	<p style="text-align: center;"><u>Behavior</u></p> <input checked="" type="checkbox"/> Normal Limits <input type="checkbox"/> Aggressive <input type="checkbox"/> Agitation <input type="checkbox"/> Retardation <input type="checkbox"/> Impulse Control <input type="checkbox"/> Aggression <input type="checkbox"/> Sexual <input type="checkbox"/> Self-Harm	<p style="text-align: center;"><u>Mood</u></p> <input checked="" type="checkbox"/> Dysphoric <input type="checkbox"/> Euphoric <input type="checkbox"/> Hypomanic <input type="checkbox"/> Anxious <input type="checkbox"/> Frustrated <input type="checkbox"/> Neutral <input type="checkbox"/> Other:	<p style="text-align: center;"><u>Thought Perceptions</u></p> <input type="checkbox"/> Hallucinations <input type="checkbox"/> Auditory <input type="checkbox"/> Visual <input type="checkbox"/> Olfactory <input type="checkbox"/> Tactile <input type="checkbox"/> Flight of Ideas <input checked="" type="checkbox"/> Oriented X3 <input type="checkbox"/> Disoriented <input type="checkbox"/> Delusional	<p style="text-align: center;"><u>Speech</u></p> <input checked="" type="checkbox"/> Normal Limits <input type="checkbox"/> Pressured <input type="checkbox"/> Tangential <input type="checkbox"/> Latency <input type="checkbox"/> Loud <input type="checkbox"/> Quiet <input type="checkbox"/> Other:
<p style="text-align: center;"><u>Attention</u></p> <input checked="" type="checkbox"/> Normal Limits <input type="checkbox"/> Distractible	<p style="text-align: center;"><u>Memory</u></p> <input checked="" type="checkbox"/> Normal Limits <input checked="" type="checkbox"/> Remote <input checked="" type="checkbox"/> Recent <input checked="" type="checkbox"/> Immediate <input type="checkbox"/> Impaired <input type="checkbox"/> Remote <input type="checkbox"/> Recent <input type="checkbox"/> Immediate	<p style="text-align: center;"><u>Suicidal/Homicidal</u></p> <input checked="" type="checkbox"/> No thoughts, no plan <input type="checkbox"/> Current, with plan <input type="checkbox"/> Thoughts, no plan <input type="checkbox"/> History of Attempts No. of Attempts Last Attempt Method of <input type="checkbox"/> Suicide Watch <input type="checkbox"/> Close Observation <input type="checkbox"/> No Harm Contract	<p style="text-align: center;"><u>Substance Abuse</u></p> <input type="checkbox"/> Current Use <input type="checkbox"/> History of SA <input type="checkbox"/> History of Tx. Drug of Choice: ETHOL, reported as 'recreational only'	<p style="text-align: center;"><u>Enrolled Community Mental Health</u></p> Where: When: N/A Contact:
<p style="text-align: center;"><u>Judgment</u></p> <input checked="" type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate			<p style="text-align: center;"><u>Prior Psychiatric Hospitalization</u></p> Where: When: N/A	<p style="text-align: center;"><u>Current Medications</u></p> Zoloft PCP: Madigan ΨARNP: TCCF Pharmacy: Med. Compliant: <input type="checkbox"/>
<p style="text-align: center;"><u>Risk/Needs</u></p> <input checked="" type="checkbox"/> Emotional/Mental Health <input type="checkbox"/> Physical Health <input type="checkbox"/> Substance Abuse <input type="checkbox"/> Occupational Skills <input type="checkbox"/> Educational Needs <input type="checkbox"/> Housing/Homelessness <input type="checkbox"/> Food/Clothing <input type="checkbox"/> Transportation <input type="checkbox"/> Income/Benefits	<p style="text-align: center;"><u>Current Stressors</u></p> <input type="checkbox"/> Divorce <input type="checkbox"/> Marriage <input type="checkbox"/> Birth of Child <input type="checkbox"/> Death in Support System <input type="checkbox"/> Loss of Job <input type="checkbox"/> Illness (Physical/Mental) <input type="checkbox"/> Recent Move <input type="checkbox"/> Homeless	<p style="text-align: center;"><u>Legal Issues</u></p> <input type="checkbox"/> Previous Arrests Current Legal Issues: <input type="checkbox"/> History of Violence <input type="checkbox"/> Appropriate for Diversion	<p style="text-align: center;"><u>Referred To:</u></p> Psych: ARNP for Medication Assessment	
<p>Diagnosis</p> <p>Axis I: 309.81 Post-Traumatic Stress Disorder (R/O)</p> <p>Axis II: Deferred</p> <p>Axis III: None reported</p> <p>Axis IV: Difficulty adjusting to incarceration</p> <p>Axis V: 60</p>				
<p>Clinical Notes</p> <p>I/M Daniel Aguirre is a 27-year old Hispanic male, currently incarcerated in G-Tank, TCCF. Received kite, dated 10/19/20096. I/M reported sleep difficulties prior to incarceration - he is a returning veteran from Iraq. PTSD symptoms included - hyperviligence when exposed to sound of doors slamming (he reports them as similar sounds to mortar round landing 100 -200 yards away); flashbacks to situations where I/M Aguirre believed he was at risk of death, and saw the death of two of his friends. He is experiencing depressive symptoms, and difficulty adjusting to incarceration. No SI or HI or self-harm reported, on this date. Referred to Psych: ARNP for medication assessment.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="width: 40%;">  <hr style="width: 100%;"/> <p>Adrian R. Magnuson-Whyte, MA, LMHC</p> </div> <div style="width: 40%; text-align: right;"> <p>10/26/2006 Date</p> </div> </div>				

APPENDIX W

Patient: AGUIRRE, DANIEL MARSHALL
 Facility: MAMC Tacoma

Date: 13 Mar 2006 0942 PST
 Clinic: Madigan Behavioral Health
 Clinic

Appt Type: ACUTS
 Provider: SMITH, ROBERT C

Patient Status: Outpatient

Reason for Appointment:

AutoCites Refreshed by SMITH, ROBERT C @ 13 Mar 2006 0949 PST
Problems

- Other Physical Therapy
- Aftercare Following Surgery Of Musculoskeletal System

Allergies

- SULFA-DRUGS: Unknown

Active Medications

Active Medications

NAPROXEN, 500MG, TABLET

Status
Active

Sig

T1 TB PO BID WF #60 RF2

Refills Left
2 of 2

Last Filled
29 Aug 2005

SO Note Written by SMITH, ROBERT C @ 13 Mar 2006 1015 PST
Chief complaint

The Chief Complaint is: SM reports "My wife is divorcing me and she told me that I need to see someone to maybe get some help she is concerned about me being a good father to my sons I don't sleep at night I have mood swings that seem to be just a normal talk to be but are disturbing to her I drink to sleep I have not really had a dream in a long bit and when I do there's bad very bad I often feel like crying over the smallest thing but only if I'm alone and on the other side I have fits of anger but only try to show them when I'm alone there is more much more but hard to explain"

Referred here

The patient was referred for services as a result of wife seeking divorce and saying to him that he needs to see a counselor, as she is fearful that he will not be good around their children

History of present illness

The Patient is a 26 year old male.

- Visit is deployment-related.

Past medical/surgical history

Reported History:

Medical: Previous psychiatric treatment reviewed with patient. See uploaded ABHC patient report for details.

Personal history

Reviewed patient's social history. See uploaded ABHC report for details.

Behavioral history: Life circumstance event history, including current reported stressors, were reviewed with the patient. See uploaded ABHC report for details.

Military: Military history of patient reviewed. See uploaded ABHC report for details.

Family history

Reviewed patient's family history. See uploaded ABHC report for details.

Subjective

Additional Relevant HPI: Discussed difficulty adjusting to Civilian life and implied desire to go to Iraq, where he functioned more congruent to the environment. Described incidents in Iraq, and their impact on him indicating his possible need for Trauma work once psychobiological issues such as sleep, irritability are better

Review of systems

Neurological symptoms: Decreased concentrating ability.

Psychological symptoms: Sleep disturbances and decreased functioning ability.

Name: AGUIRRE, DANIEL MARSHALL

FMP: Sex: M
 DOB: Tel H:
 PCat: A11.2 USA ACTIVE DUTY ENLISTED Tel W:
 MC Status: TRICARE PRIME (ACTIVE DUTY) SWS: CS:
 Insurance: No

Sponsor/SSN: AGUIRRE, DANIEL MARSHALL/
 Rank: SERGEANT
 Unit: 55555 (UNKNOWN)
 Outpt Rec. Rm: 2CR RECORDS ROOM
 PCM:
 Tel. PCM:

Physical findings

Neurological:

Mental Status Findings: • Mood was frustrated, mild and
 • Mood was anxious, moderate
 • Estimated intelligence was average. • Hallucinations of the peripheral vision, thinking he saw significant people in his life at times when it would be impossible to see them ie: in a crowd locally, when they live on the other side of the country.
 Infrequent
 • Impaired insight with regard to how emotions, thoughts, behaviors interact. Needing of clarification in treatment
 • No delusions. • Dangerousness assessment: no suicide risk Additional Mental Status Information: • Dangerousness assessment: no homicide risk.

Discussed

Reviewed treatment options with patient, weighing both benefits and risks associated with treatment

Plan

Collaboratively discussed a treatment plan with the patient. This SM will practice some behavioral interventions focused on increasing sleep hygiene, and will return on 16 MAR 2006 @0900 to follow up with this clinician re:efficacy of these interventions

A/P Written by SMITH, ROBERT C @ 13 Mar 2006 1506 PST

1. ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES

Procedure(s): -Psychiatric Evaluation Comprehensive Examination

Disposition Written by SMITH, ROBERT C @ 13 Mar 2006 1507 PST

Released w/o Limitations

Follow up: 3 day(s) in the M BEHAVIORAL HEALTH CLINIC clinic or sooner if there are problems. - Comments: 16 MAR 06 @0900
 45 minutes face-to-face/floor time..

Signed By SMITH, ROBERT C (Physician, MAMC Tacoma) @ 13 Mar 2006 1507

Name: AGUIRRE, DANIEL MARSHALL

Sex: M
 FMP/SSN Tel H:
 DOB: Tel W:
 PCat: ALL USA ACTIVE DUTY CS:
 ENLISTED
 MC Status: TRICARE PRIME (ACTIVE DUTY) SWS:
 Insurance: No

Sponsor/SSN: AGUIRRE, DANIEL MARSHALL
 Rank: SERGEANT
 Unit: 55555 (UNKNOWN)
 Outpt Rec. Rm: 2CR RECORDS ROOM
 PCM:
 Tel. PCM:

APPENDIX X

Patient: AGUIRRE, DANIEL MARSHALL
 Facility: MAMC Tacoma

Date: 06 Apr 2006 0830 PDT
 Clinic: Madigan Mental Health
 Clinic-Soldier Readiness Program

Appt Type: EST\$
 Provider: SMITH, ROBERT C

Patient Status: Outpatient

Reason for Appointment: follow up
Appointment Comments:

kjs

AutoCites Refreshed by SMITH, ROBERT C @ 06 Apr 2006 1158 PDT

Problems

- ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES
- Other Physical Therapy
- Aftercare Following Surgery Of Musculoskeletal System

Allergies

- SULFA-DRUGS: Unknown

Active Medications

Active Medications	Status	Sig	Refills Left	Last Filled
NAPROXEN, 500MG, TABLET	Active	T1 TB PO BID WF #60 RF2	2 of 2	29 Aug 2005

SO Note Written by SMITH, ROBERT C @ 06 Apr 2006 1158 PDT

Reason for Visit

Visit for: follow up

History of present illness

- The Patient is a 26 year old male.
- Visit is deployment-related

Subjective

SM reports having implimented behavioral interventions, and says that this has helped curb his maladaptive coping skills, but that he still feels 'wired and irritable all the time.' Discussed this issue at length. SM reported that his wife wants to leave and that she is 'only interested in counseling, and not clear as to her interest at all, to appease him and to clarify that it's over." With behavioral changes made, he is still experiencing high levels of anxiety. SM would like to discuss medication options with a psychiatrist

Plan

Maintain behavioral changes he has made. Begin Relaxation workshop. Schedule appt with psychiatrist. Follow up

03MAY2006@0900

A/P Written by SMITH, ROBERT C @ 06 Apr 2006 1242 PDT

1. ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES

Procedure(s): -Psychiatric Therapy Individual Approximately 45-50 Minutes

Disposition Written by SMITH, ROBERT C @ 06 Apr 2006 1242 PDT

Released w/o Limitations

Follow up: as needed in the M BEHAVIORAL HEALTH CLINIC clinic.
 45 minutes face-to-face/floor time..

Signed By SMITH, ROBERT C (Physician, MAMC Tacoma) @ 06 Apr 2006 1242

Name: AGUIRRE, DANIEL MARSHALL

FMP/SSN	Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSHAJ
DOB:	Tel H:	Rank: SERGEANT
PCat: A11.2 USA ACTIVE DUTY ENLISTED.	Tel W:	Unit: 55555 (UNKNOWN)
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	Outpt Rec. Rm: 2CR RECORDS ROOM
Insurance: No	SWS:	PCM:
		Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

THIS INFORMATION IS PROTECTED BY THE PRIVACY ACT OF 1974 (PL-93-579). UNAUTHORIZED ACCESS TO THIS INFORMATION IS A VIOLATION OF FEDERAL LAW. VIOLATORS WILL BE PROSECUTED.

STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and ICMR
 FIRMR (41 CFR) 201-45.505

APPENDIX Y

Patient: AGUIRRE, DANIEL MARSHALL
 Facility: MAMC Tacoma

Date: 18 Apr 2006 0900 PDT
 Clinic: Madigan Behavioral Health
 Clinic

Appt Type: GRP
 Provider: AHLBORN, COSSETTE D

Patient Status: Outpatient

Reason for Appointment: Per Dr. Smith

Appointment Comments:

tky

AutoCites Refreshed by AHLBORN, COSSETTE D @ 18 Apr 2006 1013 PDT

Problems

- ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES
- Other Physical Therapy
- Aftercare Following Surgery Of Musculoskeletal System

Active Medications

Active Medications	Status	Sig	Refills Left	Last Filled
NAPROXEN, 500MG, TABLET	Active	T1 TB PO BID WF #60 RF2	2 of 2	29 Aug 2005

SO Note Written by AHLBORN, COSSETTE D @ 18 Apr 2006 1014 PDT

History of present illness

The Patient is a 26 year old male.

SM reported the group was not for him and he was much more anxious after the group

Objective

Other Observations: SM asked to leave the group after the last relaxation exercise was completed. He was asked to wait to talk with this provider which he did. He was not disruptive during the group and was advised this was appreciated.

Plan

Collaboratively discussed a treatment plan with the patient. SM to return to see Dr. Smith

A/P Written by AHLBORN, COSSETTE D @ 18 Apr 2006 1014 PDT

1. ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES

Procedure(s): -Psychiatric Therapy Group (Interview)

Disposition Written by AHLBORN, COSSETTE D @ 18 Apr 2006 1014 PDT

Released w/o Limitations

120 minutes face-to-face/floor time..

Signed By AHLBORN, COSSETTE D (Behavioral Health Practitioner, MAMC Tacoma) @ 18 Apr 2006 1018

Name: AGUIRRE, DANIEL MARSHALL

FMP/SSN:	Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSHAL
DOB:	Tel H:	Rank: SERGEANT
PCat: USA ACTIVE DUTY ENLISTED	Tel W:	Unit: 55555 (UNKNOWN)
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	Outpt Rec. Rm: CTMC RECORDS
Insurance: No	SWS:	PCM:
		Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

THIS INFORMATION IS PROTECTED BY THE PRIVACY ACT OF 1974 (PL-93-579). UNAUTHORIZED ACCESS TO THIS INFORMATION IS A VIOLATION OF FEDERAL LAW. VIOLATORS WILL BE PROSECUTED.

STANDARD FORM 600 (REV. 5)
 Prescribed by GSA and ICMR
 FIRMR (41 CFR) 201-45.505

Patient: AGUIRRE, DANIEL MARSHALL
 Facility: MAMC Tacoma
 Patient Status: Outpatient

Date: 18 Apr 2006 1320 PDT
 Clinic: Madigan FP Red Team Clinic

Appt Type: ROUT
 Provider: BELLOWS, KIM A

Reason for Appointment: dep concerns x 1mo

Appointment Comments:

tri@sla@klw@sla@unk@sla@botd

AutoCites Refreshed by CARBONEL, FLORINA B. @ 18 Apr 2006 1311 PDT

Problems

- ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES
- Other Physical Therapy
- Aftercare Following Surgery Of Musculoskeletal System

Allergies

- SULFA-DRUGS: Unknown

Active Medications

Active Medications	Status	Sig	Refills Left	Last Filled
NAPROXEN, 500MG, TABLET	Active	T1 TB PO BID WF #60 RF2	2 of 2	29 Aug 2005

Screening Written by CARBONEL, FLORINA B. @ 18 Apr 2006 1310 PDT

Reason For Appointment: dep concerns x 1mo

Allergen information verified by CARBONEL, FLORINA B. @ 18 Apr 2006 1309 PDT

Vitals

Vitals Written by CARBONEL, FLORINA B. @ 18 Apr 2006 1310 PDT

BP: 131/76 Right Arm, HR: 56, RR: 16, T: 96.9 °F Otic, HT: 70.5 in Stated, WT: 187.4 lbs Upright Scale, With Shoes, Actual, BMI: 26.51, BSA: 2.041 square meters, Tobacco Use: No, Alcohol Use: Yes, Alcohol Comments: occasionally, Pain Scale: 0 Pain Free

SO Note Written by BELLOWS, KIM A @ 18 Apr 2006 1354 PDT

Chief complaint

The Chief Complaint is: Depression

History of present illness

The Patient is a 26 year old male.
 Pt in counseling currently. Was deployed to Iraq 16 mo ago. Had martial problems on return. 2 children young children. Separated from family x 52 days. Counseling started shortly before

- ° No fever ° No chills • Recent 35 lbs weight loss

Past medical/surgical history

Rt knee reconstruction. minor surgery for shrap metal

Reported History:

Recent change in medical history.

Reported medications: Not taking medication - See active medication list above

Personal history

Behavioral history: Not smoking.

Review of systems

Pulmonary symptoms: No dyspnea.

Gastrointestinal symptoms: No abdominal pain.

Physical findings

Vital signs:

- ° Current vital signs reviewed.

General appearance:

- ° Alert. ° Oriented to time, place, and person.

Name: AGUIRRE, DANIEL MARSHALL

FMP/S	Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSHAL
DOB:	Tel H:	Rank: SERGEANT
PCat: A11.2 USA ACTIVE DUTY ENLISTED	Tel W:	Unit: 55555 (UNKNOWN)
MC Status: TRICARE PRIME (ACTIVE DUTY)	CS:	Outpt Rec. Rm: CTMC RECORDS
Insurance: No	SWS:	PCM:
		Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

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Ears:
 General/bilateral:
 External Auditory Canal: ° Normal.
 Tympanic Membrane: ° Both tympanic membranes were normal.

Nose:
 ° No nasal discharge seen.

Neck:
 ° Appearance was normal. ° Thyroid showed no abnormalities.

Lungs:
 ° Respiration rhythm and depth was normal. ° Clear to auscultation.

Cardiovascular system:
 Heart Rate And Rhythm: ° Normal.
 Heart Sounds: ° Normal.
 Edema: ° Not present.

Abdomen:
 Auscultation: ° Abdominal auscultation revealed no abnormalities.
 Palpation: ° Abdominal palpation revealed no abnormalities.

Objective
 Beck's depression scale 42 - extreme depression

A/P Written by BELLOWS, KIM A @ 18 Apr 2006 1358 PDT

1. DEPRESSION: extreme by beck's depression scale, post traumatic symptoms, anger symptoms. Weight loss. continue counseling with behavioral health.

Medication(s): -SERTRALINE (ZOLOFT)--PO 50MG TAB - T 1/2 TAB PO QAM #60 Rf0 Qt: 60 Rf: 0
 Patient Instruction(s): -Parent Education: Medication Use
 -Anticipatory Guidance: Nutrition
 -Regular Exercise

2. insomnia: discussed sleep hygiene.

Medication(s): -ZOLPIDEM--PO 10MG TAB - T1 TAB PO HS #7 Rf0 Qt: 7 Rf: 0

Disposition Written by BELLOWS, KIM A @ 18 Apr 2006 1359 PDT

Released w/o Limitations

Follow up: 4 week(s) with PCM or sooner if there are problems. - Comments: Advised to call with questions.

Discussed: Diagnosis, Medication(s)/Treatment(s), Alternatives, Potential Side Effects with Patient who indicated understanding. 30 minutes face-to-face/floor time..

Signed By BELLOWS, KIM A (Physician Assistant, MAMC Tacoma) @ 18 Apr 2006 1359

Name: AGUIRRE, DANIEL MARSHALL

FMP/SSN	Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSHALL
DOB: T		Rank: SERGEANT
PCat: A11.2 USA ACTIVE DUTY ENLISTED	Cs:	Unit: 55555 (UNKNOWN)
MC Status: TRICARE PRIME (ACTIVE DUTY) SWS:		Outpt Rec. Rm: CTMC RECORDS
Insurance: No		PCM:
		Tel. PCM:

APPENDIX Z

Patient: AGUIRRE, DANIEL MARSHALL
Facility: MAMC Tacoma

Date: 03 May 2006 0900 PDT
Clinic: Madigan Mental Health
Clinic-Soldier Readiness Program

Appt Type: EST\$
Provider: SMITH, ROBERT C

Patient Status: Outpatient

Reason for Appointment: f/u

Appointment Comments:

tky

AutoCites Refreshed by SMITH, ROBERT C @ 03 May 2006 0917 PDT

Problems

- insomnia
- DEPRESSION
- ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES
- Other Physical Therapy
- Aftercare Following Surgery Of Musculoskeletal System

Allergies

- SULFA-DRUGS: Unknown

Active Medications

Active Medications	Status	Sig	Refills Left	Last Filled
SERTRALINE HCL, 50MG, TABLET	Active	T 1/2 TAB PO QAM #60 RFO NR		17 Apr 2006
NAPROXEN, 500MG, TABLET	Active	T1 TB PO BID WF #60 RF2	2 of 2	29 Aug 2005

SO Note Written by SMITH, ROBERT C @ 03 May 2006 0917 PDT

Chief complaint

The Chief Complaint is:

Subjective

Additional Relevant HPI: SM reports that he has been on Zoloft for 2 1/2 week and does not notice a difference. It is notable that he is experiencing the same amount of stressors in his life, yet is handling the situation better. He agrees that he is handling things better, and talks about a number of stressors presently in his life and a healthy response to such stressors. This SM is resolved that his divorce is inevitable. His wife has moved out of the house, with the children, and he has a roommate living with him now. He works long hours, which keeps him from obsessing and coping in less healthy ways such as ETOH abuse (he usses as an example). He is sleeping better, by self report. We discussed the issue of talking to his prescriber with all medication concerns. Both agreed to change counseling treatment to PRN basis, as he is doing better by self report

Review of systems

Systemic symptoms: No recent weight change.

Gastrointestinal symptoms: Normal appetite.

Endocrine symptoms: Libido has not changed.

Psychological symptoms: Insomnia, but reprotst tht sleep has improved considerably
Normal enjoyment of activities and no anhedonia.

Physical findings

Neurological:

Mental Status Findings: • Mood was depressed. • Mood was anxious. ° Attitude was not abnormal. ° Affect was normal.
° Level of consciousness was normal. ° Estimated intelligence was normal. ° No disorientation was observed. ° No hallucinations. ° Memory was unimpaired. ° Thought processes were not impaired. ° Thought content revealed no impairment. ° Insight was intact. ° No delusions. ° Dangerousness assessment: no suicide risk Additional Mental Status Information: ° Dangerousness assessment: no homicide risk.

Objective

Other Observations: Although his report on the ABHC stated that his reason for coming in today was because he was angry and depressed, his presentation was one of improvement and resolve, and it was his desire to discontinue regular sessions at this time. A sense that SM may be under reporting sx's, but no clear indication to this matter.

A/P Written by SMITH, ROBERT C @ 03 May 2006 0929 PDT

1. ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES

Name: AGUIRRE, DANIEL MARSHALL

FMP/S	Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSH
DC	Tel H:	Rank: SERGEANT
PCat: A11.2 USA ACTIVE DUTY ENLISTED	Tel W:	Unit: 5555 (UNKNOWN)
MC Status: TRICARE PRIME (ACTIVE DUTY) SWS:	CS:	Outpt Rec. Rm: CTMC RECORDS
Insurance: No		PCM:
		Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE

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STANDARD FORM 600 (REV. 5)
Prescribed by GSA and ICMR
FIRMR (41 CFR) 201-45.505

HEALTH RECORD	CHRONOLOGICAL RECORD OF	CAL CARE
03 May 2006 0837	Facility: MAMC Tacoma SMITH, ROBERT C	Clinic: Madigan Mental Health Clinic-Soldier Readiness Program Provider:

2. PSYCHIATRIC DIAGNOSIS OR CONDITION DEFERRED ON AXIS II (OTHER UNKNOWN AND UNSPECIFIED CAUSES OF MORBIDITY AND MORTALITY, NOT PGW SYNDROME)

Disposition Written by SMITH, ROBERT C @ 03 May 2006 0929 PDT

Released w/o Limitations

Follow up: as needed in the M MENTAL HLT CLINIC - SRP clinic.
30 minutes face-to-face/floor time..

Signed By SMITH, ROBERT C (Physician, MAMC Tacoma) @ 03 May 2006 0929

Name: AGUIRRE, DANIEL MARSHALL

Sex: M	Sponsor/SSN: AGUIRRE, DANIEL MARSH
Tel H	Rank: SERGEANT
Tel W	Unit: 55555 (UNKNOWN)
PCat: A11.2 USA ACTIVE DUTY ENLISTED	CS: CTMC RECORDS
MC Status: TRICARE PRIME (ACTIVE DUTY) SWS:	PCM:
Insurance: No	Tel. PCM:

CHRONOLOGICAL RECORD OF MEDICAL CARE.

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APPENDIX

AA

**THURSTON COUNTY CORRECTIONS FACILITY
FLOW CHART**

DATE	9/27/06	10-4-06	10/23/06	11/4/06	11/20/06
TIME	1510	1010	1030	1220	1120
PROBLEM	Psych		Refused	Psych	Insomnia
WT/HT	204	208	57CK	208	204/5'10"
B/P	109/56 68	119/60 (56)	CARD	143/86 (66)	132/73 (68)
TPR	96.7	97.3	7	97.3	98.2
LMD					
BLOOD SUGAR					
HCG RESULT					
URINE DIP					
PPD RESULT					
LAB					
LAB					
MED LEVEL					
MEDICATION	1 Sertraline			Prozac	
Patient advised of appropriate community follow up on release	-				
SIDE EFFECTS REVIEWED	-				
COUNSELING HAND OUTS					
PROGRESS NOTE					✓
REFERRED					S. Today
RETURN TO CLINIC	low risk	prn			prn
SIGNATURE	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

ALLERGIES: *sulfa*

NAME <i>Aguirre, Daniel M.</i>	DOI	ID#
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**THURSTON COUNTY CORRECTIONS FACILITY
FLOW CHART**

DATE	11/22/06	1-4-07	1-10-07	2-26-07	3/7/07
TIME	1343	0950.		1055	1245
PROBLEM	Psych - c/o cold.		R	Psych	Psych
WT/HT	206	203		201	211
B/P	141/74 (53)	114/59		112/59 69	122/63 99
TPR	97.3	97.0 57		96.8	97.7
LMD					
BLOOD SUGAR					
HCG RESULT					
URINE DIP					
PPD RESULT					
LAB					
LAB					
MED LEVEL					
MEDICATION	Plavix	CTM 4mg ITTID x 10 days.		DC Sertraline Metazepam	
Patient advised of appropriate community follow up on release	✓	Terracin Percocet 200mg ITTID x 7 days.		✓	✓
SIDE EFFECTS REVIEWED	✓			✓	✓
COUNSELING HAND OUTS	✓			✓	✓
PROGRESS NOTE	✓	✓		✓	✓
REFERRED					
RETURN TO CLINIC	looks	prn		looks - as scheduled	
SIGNATURE	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

ALLERGIES: SULFA

NAME AGUIRRE, DANIEL M DC

ID

**THURSTON COUNTY CORRECTIONS FACILITY
FLOW CHART**

DATE	3/21/07	3-29-07	4-13-07		
TIME	1140				
PROBLEM	Psych	R	R		
WT/HT	215 lbs	R	R		
B/P	124/100	e	e		
TPR	97.	F	L		
LMD					
BLOOD SUGAR		4			
HCG RESULT		S	T		
URINE DIP		E	O		
PPD RESULT		d			
LAB					
LAB					
MED LEVEL			W		
MEDICATION			C		
			C		
Patient advised of appropriate community follow up on release	/				
SIDE EFFECTS REVIEWED	/				
COUNSELING					
HAND OUTS	/				
PROGRESS NOTE					
REFERRED					
RETURN TO CLINIC	2 mos				
SIGNATURE	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		

ALLERGIES: Sulfonamide

NAME	Aguirre Daniel	DO		ID#	
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