

NO. _____

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

In re Personal Restraint of:

CHARLES DAVIS

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF THURSTON

The Honorable Paula Casey

BRIEF OF PETITIONER

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I. STATUS OF PETITIONER

Charles Davis, DOC #318058, applies for relief from restraint. He is now incarcerated at Airway Heights Correctional Center, serving a indeterminate sentence of 136 months to life under the jurisdiction of the Department of Corrections. The court in which he was sentenced is Thurston County Superior Court, Cause #09-1-00963-9. See Ex. A (Judgment and Sentence).

Mr. Davis was convicted of one count of First Degree Rape following a trial. His sentencing judge was the Honorable Paula Casey, and his attorney was David Kauffman. Mr. Davis appealed his conviction in State v. Charles Davis, 162 Wn. App. 1037 (2011), an unpublished opinion. The Washington State Court of Appeals affirmed Mr. Davis' conviction and the Washington Supreme Court denied review. The Court of Appeals mandate for Mr. Davis' appeal was issued on February 9, 2012.

There are no other collateral attacks pending.

II. STATEMENT OF THE CASE

This petition is filed pursuant to RAP 16.4(c)(2). No other remedies are available to Mr. Davis. His restraint is unlawful because he is being held on a constitutionally infirm conviction. Both his trial attorney and appellate attorney rendered ineffective

assistance of counsel, violating his rights under Art. I, § 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution, and the Due Process Clauses of both Constitutions. In addition, his right to a public trial was violated, as required by the federal and state constitutions. U.S. Const., Amend. VI; Wash. Const., Art. I, § 22. As a result of this violation of his constitutional rights, Mr. Davis has suffered actual prejudice.

III. GROUNDS FOR RELIEF

Ground 1: Mr. Davis' counsel offered evidence that the complainant, K.C., had engaged in acts of prostitution and had asked her friend to lie about being raped by a group of men. The court denied counsel's motion at that time, finding that there was insufficient evidence that Mr. Davis and K.C. engaged in a consensual act of prostitution to warrant its admission. At trial, Mr. Davis testified that the encounter was a consensual act of prostitution. Was counsel ineffective for failing to renew his motion to admit this evidence, warranting reversal of Mr. Davis' trial?

Ground 2: During jury selection, the court asked a spectator

to “give up” the seat for the jury. According to Mr. Davis, the spectator left the courtroom and did not return. Did the trial court improperly exclude the juror from the courtroom, requiring reversal?

IV. FACTS

A. Facts Relevant to Rape Shield Issue

On September 24, 2001, K.C. contacted the Olympia Police Department to report that she had been sexually assaulted at the Lacey Transit Center the day before. Ex. B at 1 (VRP 3/16/2010). K.C. testified that her mother had dropped her off so that she could take the bus downtown and visit her boyfriend, although she had told her mother she was visiting someone else. Ex. B at 2. K.C. did not know which bus to take, so she tried to find a bus schedule. Ex. B at 3. Several men were behind her and forced her into the men’s bathroom, where at least one of the men sexually assaulted her by placing his penis into her vagina. Ex. B at 5-6.

K.C. did not tell anyone about the assault right away. Ex. B at 12. Only when she experienced pain, did she tell her mother. Ex. B at 12. Her mother took her to the ER and a rape kit was administered, with a DNA sample being collected. Ex. B at 14.

A few weeks after the sexual assault, K.C. ran away from home. Ex. B at 16. She testified that she ran away because her

parents did not believe she had been raped, which she attributed to their disapproval of a boyfriend she was seeing. Ex. B at 16-17.

K.C. ran away with a friend named Jenny Anderson. Ex. C at 1 (Anderson Declaration of 2/8/10). During that time, Ms. Anderson believed that K.C. was working as a prostitute:

I recall several times when [K.C.], in public, would walk up to cars, speak with the occupants, and then climb inside and leave the area in the company of the people she had spoken to.

Ex. C at 2 (Anderson Declaration).

Additionally, K.C. also told Ms. Anderson to lie to K.C.'s boyfriend on her behalf about being raped:

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

Ex. C at 2 (Anderson Declaration).

Ms. Anderson added that it was common for K.C. to ask Ms. Anderson to lie for her when she had meetings with other men:

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

Ex. C at 2 (Jennifer Anderson Declaration).

Finally, in a supplemental declaration, Ms. Anderson stated that she witnessed K.C. engage in prostitution-related activities on multiple occasions:

1. In addition, I want to add that I repeatedly witnessed K.C. engage in the following behaviors:
 - a. Approach cars with men who were strangers to her and stop those cars;
 - b. Get into cars with males who appeared to be strangers to her;
 - c. Wear revealing clothing when she would approach those cars and those men, usually really short shorts and a tube top that looked to be two sizes too small. I never saw K.C. wear long pants, even in the cold.

Ex. D (Supp. Jennifer Anderson Declaration).

Law enforcement was unable to locate any suspects, but did recover a DNA sample from K.C. Eight years later, the Washington State Patrol Crime Lab was able to match the profile developed

from the semen recovered in the rape kit to Charles Davis. Ex. E (Washington State Crime Laboratory Report). Charges were filed against Mr. Davis on June 3, 2009, and the matter was set for trial. Ex. F (Original Information).

In a rape shield hearing conducted before Judge Gary Tabor on February 8, 2010, Mr. Davis's attorney sought to introduce Ms. Anderson's testimony that she witnessed K.C. appear to engage in prostitution-related transactions. Ex. G at 2 (VRP 2/8/2010). Counsel also requested the court admit evidence that Ms. Anderson witnessed K.C. get into a car with several men, and subsequently asked Ms. Anderson to lie to K.C.'s boyfriend about it by telling him she was raped. Ex. G at 3.

At the time of the hearing, the court had no information to suggest that Mr. Davis and K.C. engaged in a consensual act of prostitution. Ex. G at 6. Counsel alluded to the possibility that should Mr. Davis testify during trial, he might testify as such, and suggested that the court provisionally admit the evidence in anticipation of corroborating evidence from Mr. Davis. Ex. G at 7.

Because the court had no present allegation of prostitution in this case to link to the relevancy of K.C.'s alleged prostitution history, the court denied the defense motion to admit the evidence.

Ex. G at 10. The court, however, stated that “[a]bsent more information—I’m not fishing for more information, but I’m indicating that my ruling today is based on the posture of the case before me at this time.” Ex G at 11.

During trial, Mr. Davis testified that he and K.C. engaged in a consensual, prostitution-related sexual encounter at the Lacey Transit Center. Ex. H at 1-3 (VRP 3/17/2010). Despite Mr. Davis’ testimony, which supplied the necessary link to the relevancy of Ms. Anderson’s testimony, defense counsel never sought to renew the motion to admit Ms. Anderson’s testimony. Mr. Davis appealed his conviction, which was upheld by Division I of the Court of Appeals. State v. Davis, 162 Wn.App. 1037 (2011) (unpub.). Appellate counsel alleged the court’s failure to permit Ms. Anderson’s testimony violated his Confrontation rights, while the state argued that the issue was not properly preserved. Davis, 162 Wn.App., at 3.

The Court of Appeals agreed that the issue had not been properly preserved. Defense counsel had failed to renew his motion to offer Ms. Anderson’s testimony after Mr. Davis testified that his encounter with K.C. was a consensual, prostitution-related

one. Id. As such, the Court held that Mr. Davis failed to preserve the issue for appeal. Id. at 4.

B. Facts Relevant to Closed Courtroom Issue

At the commencement of voir dire, the court announced that “[w]e have a spectator that we’re going to need to give up the seat for the jury, when our court is in session.” Ex. I at 1 (VRP 3/15/2010). The record contains no further information, but Mr. Davis has provided a declaration describing what happened next, attached as Ex. J:

6. I had previously written to the NAACP, Court Watch organizations, and local colleges to ask people to attend my trial and support me;
7. There was a young female in her 20s who was present in the courtroom that morning prior to the jury coming in;
8. I recall that when the judge came out, she told the woman that she would need to give her seat to the jury members coming in, or words to that effect;
9. The woman, as I recall, did not immediately move, prompting the bailiff to walk over to her;
10. I saw the bailiff whisper to her, and then I saw the woman get up and walk out of the courtroom;
11. I presume, based on what the judge had said, and based on the woman’s actions, that the bailiff asked her to leave;

12. The woman left the courtroom and did not come back;
13. I was disappointed, as I had asked for people to come to support me, and I believe that she had come to watch my trial at my request;
14. At no time did the court advise the woman that she was free to remain in the courtroom.

Ex. J at 1-2. Mr. Davis submits that trial counsel was ineffective for failing to renew his motion to Ms. Anderson's testimony, and that both trial and appellate counsel were ineffective for failing to object to the court's exclusion of a spectator from the jury selection process.

V. ARGUMENT

To prevail on a PRP, the petitioner must be able to demonstrate that he or she is held under an unlawful restraint. RAP 16.4. Under RAP 16.4(c), a conviction obtained "in violation of the Constitution of the United States or the Constitution or laws of the State of Washington." RAP 16.4(c)(2). Where, as here, a claim involves a constitutional violation, the petitioner must merely demonstrate prejudice, rather than a complete miscarriage of justice - the requisite standard for most collateral claims. See In re personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990); In re Haverty, 101 Wn.2d

498, 504, 681 P.2d 835 (1984). The burden of proof is preponderance of evidence. In re Brett, 142 Wn.2d 868, 874, 16 P.3d 601 (2001).

Both the federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. McMann v. Richardson, 397 U.S. 759, 771 n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970); see also Strickland v. Washington, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). Ineffective assistance of counsel results in a manifest injustice justifying relief under this rule. State v. S.M., 100 Wn.App. 401, 408-09, 996 P.2d 1111 (2000).

To determine whether counsel rendered effective assistance, the Supreme Court fashioned the following two-prong test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland, 466 U.S. at 687. The defendant must make both showings to prevail on an ineffective assistance of counsel claim. Id.

For ineffective assistance of counsel claims on collateral attack, “no ‘double prejudice’ showing above and beyond the prejudice showing required under Strickland should be imposed. In meeting his Strickland burden, a petitioner has necessarily met the burden of proving ‘actual and substantial prejudice.’” In re Crace, 174 Wn.2d 835, 845, 280 P.3d 1102, 1107 (2012).

Here, trial counsel was ineffective for failing to renew his motion to introduce the testimony of Ms. Anderson after Mr. Davis testified that his encounter with K.C. was a consensual act of prostitution.

A. Effective counsel would have renewed the motion to admit Jennifer Anderson’s testimony after Mr. Davis testified that he and K.C. were engaged in a consensual act of prostitution.

To establish the first prong of the Strickland test, the defendant must first show that “counsel’s representation fell below an objective standard of reasonableness based on consideration of all the circumstances.” State v. Thomas, 109 Wn.2d 222, 229-30, 743 P.2d 816 (1987). If defense counsel’s conduct may be

characterized as a legitimate trial strategy or tactic, it is not considered ineffective. Id. at 229-30. However, “tactical” or “strategic” decisions by defense counsel must still be reasonable decisions. Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 2536-37, 156 L.Ed.2d 471 (2003) (in capital case, counsel’s failure to fully investigate ballistics evidence suggested “inattention, not reasoned, strategic judgment”).

1. K.C’s prior prostitution related activities were “distinctive sexual patterns” that were admissible under the rape shield statute.

The rape shield statute provides:

Evidence of the victim’s past sexual behavior including but not limited to the victim’s marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim’s consent except as provided in subsection (3) of this section....

(3)(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim’s consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The

defendant may then offer evidence pursuant to the order of the court.

RCW 9A.44.020.

Prior sexual conduct cannot be used to attack the victim's credibility, but evidence of distinctive sexual patterns can be relevant if it demonstrates "enough similarity between the past consensual sexual activity and the defendant's claim of consent." State v. Hudlow, 99 Wn.2d 1, 11, 659 P.2d 514 (1983). In considering prejudice, courts must focus on the prejudice to the fact-finding process itself, i.e., "whether the introduction of evidence of the victim's past sexual history may confuse the issues, mislead the jury, or cause the case to be decided on an improper or emotional basis." State v. Morley, 46 Wn. App. 156, 159, 730 P.2d 687 (1986). Equally important, however, are the defendant's constitutional rights:

The trial court must also consider the effect exclusion of the evidence will have on a defendant's right to a fair trial. The entire process must take into account the potential impact upon the criminal defendant's constitutional rights under the sixth amendment to the United States Constitution and article 1, section 22 under the Washington State Constitution to present testimony in his defense and to confront and cross-examine adverse witnesses.

Id.

Courts have previously considered whether the complainant's prior acts of prostitution are admissible to prove a consensual act of prostitution took place in the charged case. In Morley, the complaining witness, Ms. S., claimed that the defendant offered her a ride, drove her to a remote cabin, threatened to harm her, and then forced her to have intercourse with him. State v. Morley, 26 Wn. App. 156, 157, 730 P.2d 687 (1986). Mr. Morley testified that he and Ms. S. had agreed to have sexual intercourse in exchange for twenty dollars. Id.

At trial, Mr. Morley sought to admit a statement from another witness that Ms. S. had offered him sex in exchange for money. Id. The trial court ruled the testimony admissible. Id. On appeal, the ruling was not disturbed:

With regard to the [witness] testimony, the court found it relevant since it was factually similar and, because of the relationship between the time of the statement (soliciting sex for money from [the witness]) and the time of the alleged rape, the probative value outweighed any prejudice to the truth-finding process.

Id. at 159-60, cited with approval in State v. Gregory, 158 Wn.2d 759, 147 P.3d 1201 (2006) ("Similarly, in State v. Morley, the Court of Appeals did not take issue with the trial court's ruling allowing a witness to testify that, shortly before the incident with the

defendant, the victim had offered the witness sex in exchange for \$40 in circumstances very similar to the defendant's version of events" (internal citations omitted)).

Here, like in Morley, the prostitution activities were close in time to the event—within three weeks of the charged sexual assault—and similar in nature to the charged acts. In both instances, K.C. either was or claimed to be approached by a group of men.¹ In both incidents, K.C. had some form of interaction with both groups of men. And, in both incidents, K.C. either characterized the interaction as rape—or told someone to tell her boyfriend she was raped. In a case where a detective and her own mother told K.C. that they did not believe her, such evidence is highly relevant to Mr. Davis' defense of consent.

There can be no strategic reason for failing to renew the motion to admit evidence that went to the heart of Mr. Davis' theory of consent. The evidence that Ms. Anderson had to offer could not be relevant until Mr. Davis testified or offered some other evidence that the theory of his case was that he and K.C. engaged in a consensual prostitution-related transaction.

¹ The actions of K.C. would support a charge for prostitution loitering under Olympia Municipal Code 9.24.030.

Competent counsel would have moved to renew the motion to admit Ms. Anderson's testimony.

2. The failure to renew this motion resulted in prejudice to Mr. Davis.

Failure to admit Jennifer Anderson's testimony would have violated Mr. Davis' rights. Further, given the credibility concerns that other witnesses, including the lead detective and K.C.'s mother, expressed about K.C., evidence that would have corroborated Mr. Davis' statement that K.C. was a prostitute, and that K.C. was willing to lie about prostitution related activities to keep the peace with her boyfriend would have made a difference in the outcome of this case.

The Sixth Amendment of the United States Constitution and Art. 1, § 22 of the Washington Constitution grant defendants the right to present all admissible evidence at trial. State v. Clark, 78 Wn.App. 471, 999 P.2d 964 (1995). Evidence is admissible when relevant, provided other rules do not preclude its admission. Clark, 78 Wn. App. at 477; ER 401, 402.

In addition to proving consent, K.C.'s past prostitution activities supply a motive to lie in this instance. K.C. has previously engaged in multiple prostitution-related activities and has decided

that she would rather make false accusations of rape than let her boyfriend find out the truth. See Ex. D (Supplemental Declaration of Ms. Anderson). That was precisely at issue here. The similarity between the two acts makes the past act highly probative and relevant, and admission of such evidence necessary to protect Mr. Davis' Confrontation rights.

State law privileges must give way to a defendant's right under the confrontation clause to explore a witness' bias. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). Exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959).

Additionally, the accused must be accorded the right to present "a meaningful opportunity to present a complete defense," rooted in the Due Process, Compulsory Process and Confrontation clauses of the federal constitution. Crane v. Kentucky, 476 U.S. 683, 690, 90 L.Ed.2d 636, 106 S. Ct. 2142 (1986). That right is not unlimited: "State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a

defense so long as they are not ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’” United States v. Scheffer, 523 U.S. 303, 308, 118 S. Ct. 1261, 140 L.Ed.2d 413 (1998) (quoting Rock v. Arkansas, 483 U.S. 44, 56, 97 L.Ed.2d 37, 107 S. Ct. 2704 (1987)) (emphasis added). But, “these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, [evidentiary rules] may not be applied mechanistically to defeat the ends of justice.” Chambers v. Mississippi, 410 U.S. 284, 302 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). The Supreme Court has “found the exclusion of evidence to be unconstitutionally arbitrary or disproportionate only where it has infringed upon a weighty interest of the accused.” Scheffer, 523 U.S. at 308.

While Hudlow limits the accused’s ability to introduce evidence of the complainant’s prior sexual behavior, Hudlow was decided before the United States Supreme Court issued its ruling in Olden v. Kentucky, 488 U.S. 227, 109 S. Ct. 480, 102 L.Ed. 2d 513 (1988) and would have likely been decided differently after the publication of that case.

In Olden, the trial court abused its discretion by precluding cross-examination of an alleged victim to show she fabricated a

rape charge in order to protect her relationship with her live-in boyfriend. The victim was white and her boyfriend was black. The trial court felt that this evidence might prejudice the jurors against the victim. This had failed to accord the proper weight to the right to confrontation. Id. at 231.

The Kentucky Court of Appeals did not dispute, and indeed acknowledged, the relevance of the impeachment evidence. Nonetheless, without acknowledging the significance of, or even advertent to, petitioner's constitutional right to confrontation, the court held that petitioner's right to effective cross-examination was outweighed by the danger that revealing Matthews' interracial relationship would prejudice the jury against her. While a trial court may, of course, impose reasonable limits on defense counsel's inquiry into the potential bias of a prosecution witness, to take account of such factors as "harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that [would be] repetitive or only marginally relevant," the limitation here was beyond reason.

Id. at 232 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

Thus, in Olden, the Supreme Court vindicated the rights of the defendant to effectively cross examine a witness over the complainant's desire to be spared uncomfortable examination. This same argument was briefed and presented to the Washington Supreme Court in State v. Gregory. The court had this to say:

Gregory argues the trial court should have allowed him to cross-examine R.S. about her prior acts of prostitution because doing so would allow him to establish that she had a motive to falsely accuse him of rape. According to Gregory, the trial court's refusal to admit evidence of R.S.'s prior sexual conduct violated his state and federal confrontation rights because he could not explore R.S.'s bias. The rape shield statute does not allow evidence of prior sexual conduct to be admitted on the issue of a victim's credibility under any circumstances. Gregory acknowledges that "[o]n its face the statute strictly prohibits evidence of [R.S.'s] past sexual behavior for any issue other than consent." However, Gregory argues that it is unconstitutional to apply the statute in this way, despite its plain language, if it prevents him from exposing through cross-examination R.S.'s bias or motive to lie.

As to the issue of whether Mr. Gregory should have been allowed to introduce past prostitution-related activities to show motive to lie:

Even if we assume for the sake of argument that Gregory is correct on this point, the defense's offer of proof established only remote prostitution activities. The trial court determined R.S.'s prior acts of prostitution were too remote to be relevant...

The Gregory court expressly declined to resolve whether a defendant was entitled to cross-examine on a prior act of prostitution. Rather, the court merely held that because over two years had passed between the act and the current allegation, it was too remote to be relevant.

Unlike Gregory, the act of prostitution at issue in Mr. Davis' case occurred almost contemporaneously, and involved quite similar facts. Given the above considerations, the current state of the law would have supported admission of K.C.'s prior prostitution-related acts, and given that this case rested on the word of K.C. alone, one cannot say that Mr. Davis' trial would have had the same result had this evidence been admitted. Mr. Davis' counsel was ineffective for failing to renew his motion, and Mr. Davis was prejudiced by his actions. He is entitled to a new trial.

B. By ordering a spectator to “give up a seat for the jury,” the court effected a courtroom closure requiring reversal and remand for a new trial.

“[I]n criminal prosecutions the accused shall have the right...to have a speedy public trial.” Art. I, § 22, Wash. Const.; see also U.S. Const., amend. VI. The right to open proceedings extends to jury selection, which “is itself a matter of importance, not simply to the adversaries but to the criminal justice system.” Press-Enter. Co. v. Superior Court, 464 U.S. 501, 505, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984). Our Supreme Court has stated, “[a]lthough the public trial right may not be absolute, protection of this basic constitutional right clearly calls for a trial court to resist a closure

motion except under the most unusual circumstances.” State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995).

In Bone-Club, the Supreme Court set forth the procedure the trial court must follow before closing a courtroom. The trial court had to find that the proponent of closure made a showing of a compelling interest, that anyone present in the courtroom had to be given an opportunity to object, the proposed means of closure had to be the least restrictive, the court had to weigh the competing interests of the public and the proponent, and the order could not be broader in purpose than necessary. Id. at 258-59.

In several cases, the Washington Supreme Court has considered the issue of excluding spectators from jury selection because of space limitations, and in each case, the court has found the practice to be reversible error. First, in Orange, the court told the family members of the defendant at the start of voir dire:

I am ruling no family members, no spectators will be permitted in this courtroom during the selection of the jury because of the limitation of space, security, etcetera [sic]. That’s my ruling.

All right. Gentlemen, I think this was worthwhile and the jury will be here. The family of course, they [i.e., the prospective jurors] will have to utilize this area, and I certainly apologize that we don’t have the

facilities for all of the families who are definitely interested, concerned to be here throughout the entire trial, but when the jury is selected, well, we will have [a] lot of room and evidence will be produced at that time, and you may attend.

In Re Orange, 152 Wn.2d 795, 801, 100 P.3d 291 (2004). The court held that the failure to conduct the five-part Bone-Club analysis violated Mr. Orange's right to a fair trial, and that Mr. Orange was entitled to a new trial, stating that "[p]rejudice is presumed where a violation of the public trial right occurs." Orange, 152 Wn.2d at 814 (citing Bone-Club, 128 Wn.2d at 261-62).

Similarly, in State v. Brightman, the trial court announced that it would not be able to have any spectators in the courtroom during voir dire because of perceived security problems. State v. Brightman, 155 Wn.2d 506, 511, 122 P.3d 150 (2005). No spectators were in the courtroom at the time. Id.

In evaluating the issue, the Supreme Court was asked to "look beyond the plain language of the [trial] court's ruling in order to determine the nature of the closure." Id. at 516. The court declined to do so, reiterating the holding of Orange that "the very existence of the mandated order create[d] a strong presumption that the order was carried out in accordance with its drafting." Id.

(citing Orange, 152 Wn.2d at 813). The Brightman court held: “[t]hus, once the plain language of the trial court’s ruling imposes a closure, the burden is on the State to overcome the strong presumption that the courtroom was closed.” Id. The case was remanded for a new trial. Id. at 517.

The Court of Appeals went even further in State v. Njonge, 161 Wn. App. 568, 255 P.3d 753 (2011), holding that it was not necessary that the court issue an express order closing the courtroom in order to find a public trial violation. There, the court stated that the chances of spectators watching voir dire in a crowded courtroom were “slim to none.” Id. at 572. The next day, the prosecutor asked that some of the family members be permitted to watch voir dire. The judge responded:

Actually, that seemed to be a better idea. We checked with the fire department. They wouldn’t let us leave the doors open for visitors to come in. Let’s move No. 30 over next to 34, and then we can have visitors sitting in the second row there.

Id. at 572. The Court of Appeals observed that “[t]here was no additional discussion of the issue on the record. The record does not show any observer being asked to leave the courtroom or any objection to the voir dire procedure, by either the parties or any

observers. The court clerk's minutes reflect no order relating to a closure." Id.

The court was asked to consider the issue of whether a public trial violation was had where the court did not expressly order the courtroom closed. The court stated, "we hold that Njonge is not required to show an express closure order or to make an objection in order to obtain review on his public trial argument raised for the first time on appeal." Id. at 576.

Here, the court ordered a spectator to "give up a seat for the jury." Mr. Davis has supplied a declaration which further describes what happened next: the spectator left the courtroom. Ex. J (Davis Declaration). Failure of appellate counsel to raise an open courtroom issue on appeal is deficient and prejudicial and constitutes ineffective assistance of appellate counsel. Orange, 152 Wn.2d at 814. The proper remedy is remand for a new trial. Id.

VI. REQUEST FOR RELIEF

For the foregoing reasons, this Court should reverse Mr. Davis's conviction and remand for a new trial.

VII. OATH

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

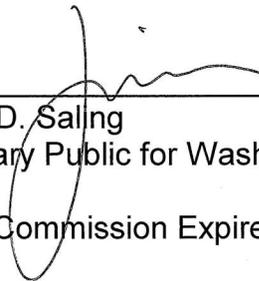
Respectfully submitted this 8th day of February, 2013.



AMY I. MUTH, WSBA #31862
Attorney for Petitioner Charles Davis

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 8th day of February, 2013.





Ian D. Saling
Notary Public for Washington
My Commission Expires: 12/29/2015

EXHIBIT A

13

FILED
SUPERIOR COURT
THURSTON COUNTY WA

*10 MAY -6 2010

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

No. 09-1-00963-9

vs.

FELONY JUDGMENT AND SENTENCE (FJS)

CHARLES JEFFERY DAVIS,

Defendant.

Prison RCW 9.94A.712 Prison Confinement

Jail One Year or Less RCW 9.94A.712 Prison

Confinement (FELONY SEX OFFENSE)

First-Time Offender (DETERMINATE PLUS SENTENCE)

Special Sexual Offender Sentencing Alternative

Special Drug Offender Sentencing Alternative

Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8

SID: WA17157032

If no SID, use DOB: 03/04/1963

PCN: BOOKING NO.

I. HEARING

1.1 A sentencing hearing was held on May 6, 2010 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on ~~May 6, 2010~~
by plea jury-verdict bench trial of:

MAY 13, 2010 (FJS)

COUNT	CRIME	RCW	DATE OF CRIME
I	RAPE IN THE FIRST DEGREE	9A.44.040	September 23, 2001

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the (FIRST AMENDED) Information.

Additional current offenses are attached in Appendix 2.1.

A special verdict/finding that the offense was predatory was returned on Count(s) _____, RCW 9.94A. _____.

A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) _____, RCW 9.94A. _____.

A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) _____, RCW 9.94A. _____, 9A.44.010.

A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.835.

This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

The court finds that the defendant is subject to sentencing under RCW 9.94A.712.

A special verdict/finding for use of firearm was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.

A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____, RCW 9.94A.602, 9.94A.533.

A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the

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COPY TO PROSECUTOR

10-9-10645-9

COPY TO DOC

perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ . RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) _____ involve(s) **domestic violence**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- None of the current offenses constitute same criminal conduct.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 FELONY VUCSA	5-2-08	KING CO.	5-12-06	A	DRUG
2					
3					
4					
5					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- None of the prior convictions constitutes same criminal conduct.
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	1	XII	102-136 mo. TO LIFE	—	102-136 mo. TO LIFE	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present. (SM) Sexual motivation, RCW 9.94A.533(8).
[] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
[] within [] below the standard range for Count(s) _____.
[] above the standard range for Count(s) _____.
[] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
[] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [] found by jury by special interrogatory.
Findings of fact and conclusions of law are attached in Appendix 2.4. [] Jury's special interrogatory is attached. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: _____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE \$ RESERVED Restitution to: K.C.
RTN/RJN \$ _____ Restitution to: _____
\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)
PCV \$ 500.00 Victim assessment RCW 7.68.035
\$ _____ Domestic Violence assessment RCW 10.99.080
CRC \$ 200.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
Criminal filing fee \$ 200- FRC
Witness costs \$ _____ WFR
Sheriff service fees \$ _____ SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR
 Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760
WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760
FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine
 deferred due to indigency RCW 69.50.430
CDF/LDI/FCD \$ _____ Drug enforcement fund of _____ RCW 9.94A.760
NTF/SAD/SDI
CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
 \$ 100.00 Felony DNA collection fee [] not imposed due to hardship RCW 43.43.7541
RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000
 maximum) RCW 38.52.430
 \$ _____ Other costs for: _____
 \$ 800- TOTAL RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[] is scheduled for _____

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
<i>RJN</i>			

[X] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here:

Not less than \$ PER per month commencing PER CO. RCW 9.94A.760.
CCO

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

[] In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with KRISTIC CAVETZ (^{DOB} 5-26-95) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring, in the amount of \$ _____.

4.4 OTHER:

ALL CONDITIONS OF APPENDIX "H"
ARE ATTACHED AND INCORPORATED HEREBY
BY REFERENCE.

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

SEE 4.5 (b)
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____ *

Actual number of months of total confinement ordered is: SEE 4.5 (b) 136 MONTHS TO LIFE
(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other IN PRISON counts, see Section 2.3, Sentencing Data, above.)

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

NON-FELONY COUNTS:

Sentence on counts _____ is/are suspended for _____ months on the condition that the defendant comply with all requirements outlined in the supervision section of this sentence.

_____ days of jail are suspended on Count _____
_____ days of jail are suspended on Count _____

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, or sexual motivation, UVCSA in a protected zone, or manufacture of

methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count 1 minimum term 136 MONTHS maximum term LIFE
Count _____ minimum term _____ maximum term _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.6 COMMUNITY PLACEMENT is ordered as follows: Count _____ for _____ months;
Count _____ for _____ months; Count _____ for _____ months.

COMMUNITY CUSTODY for count(s) 1, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

- LIFE TIME COMMUNITY CUSTODY -

COMMUNITY CUSTODY is ordered as follows:

Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.] STATUTORY LIMIT ON SENTENCE. Notwithstanding the length of confinement plus any community custody imposed on any individual charge, in no event will the combined confinement and community custody exceed the statutory maximum for that charge. Those maximums are: Class A felony--life in prison; Class B felony--ten (10) years in prison; Class C felony--5 (5) years in prison.

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; and (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: VICTIM K.C.

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).

The defendant shall participate in the following crime-related treatment or counseling services: _____

SEXUAL DEVIANCY EVALUATION AND COMPLY WITH RECOMMENDED TREATMENT
 The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

ALL CONDITIONS OF APPENDIX "H"

Other conditions: ALL CONDITIONS OF APPENDIX "H"

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal

financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving.

4. Additional Requirements Upon Moving to Another State: If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff

immediately. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays after losing your residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

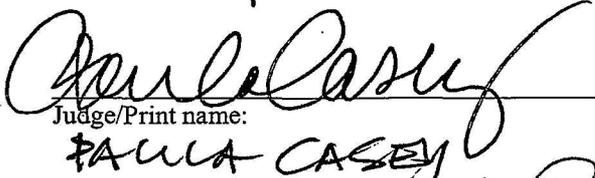
If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State

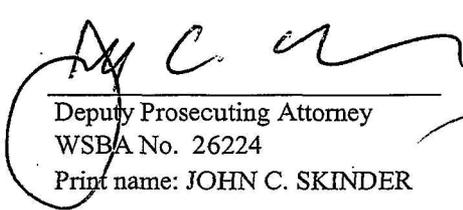
7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

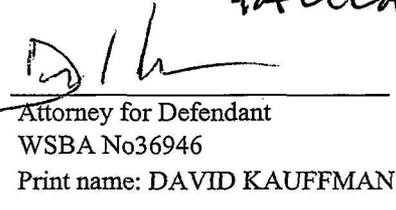
8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

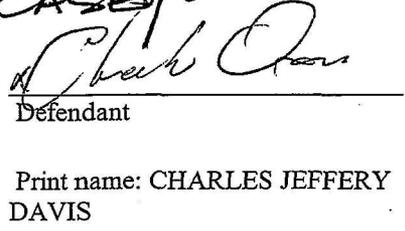
- 5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- 5.10 OTHER: Bail previously posted, if any, is hereby exonerated and shall be returned to the posting party.

DONE in Open Court and in the presence of the defendant this date: MAY 6, 2010


Judge/Print name: PAULA CASEY


Deputy Prosecuting Attorney
WSBA No. 26224
Print name: JOHN C. SKINDER


Attorney for Defendant
WSBA No36946
Print name: DAVID KAUFFMAN


Defendant
Print name: CHARLES JEFFERY DAVIS

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *Charles O'Ryan*

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.
 Interpreter signature/Print name: _____

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____
 Clerk of the Court of said county and state, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA17157032 Date of Birth 03/04/1963
 (If no SID take fingerprint card for State Patrol)
 FBI No. 571740LA0 Local ID No. _____
 PCN No. _____ Other _____
 Alias name, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Native American Other: _____
Ethnicity: Hispanic Non-Hispanic
Sex: Male Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, *Jodi Hoff* Dated: 05-06-10

DEFENDANT'S SIGNATURE: *Charles O'Ryan*



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON

NO. 09-1-00963-9

Plaintiff,

vs.

WARRANT OF COMMITMENT ATTACHMENT TO
JUDGMENT AND SENTENCE (PRISON)

CHARLES JEFFERY DAVIS,

Defendant.

DOB: 03/04/1963
SID: WA17157032 FBI: 571740LA0
PCN:
RACE: B
SEX: M
BOOKING NO:

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

The defendant CHARLES JEFFERY DAVIS has been convicted in the Superior Court of the State of Washington for the crime(s) of:

RAPE IN THE FIRST DEGREE

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

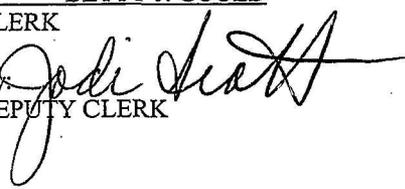
YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

Paula Casey

BETTY J. GOULD

CLERK

By: 
DEPUTY CLERK

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

STATE OF WASHINGTON) Cause No.: 09-1-00963-9
)
Plaintiff)
v.) JUDGEMENT AND SENTENCE (FELONY)
DAVIS, CHARLES JEFFREY) APPENDIX H
Defendant) ADDITIONAL CONDITIONS OF SENTENCE
)
DOC No. 318058)

CRIME RELATED PROHIBITIONS:

1. Report to, and be available for, contact with the assigned community corrections officer as directed.
2. Work at Department of Corrections approved education, employment and/or community service.
3. Not consume controlled substances except pursuant to lawfully issued prescriptions.
4. While in community custody, not unlawfully possess controlled substances.
5. Pay supervision fees as determined by the Department of Corrections.
6. Receive prior approval for living arrangements and residence location.
7. Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service.
8. Notify the supervising community corrections officer of any change in address or employment
9. Remain within geographic boundary as set forth in writing by the community corrections officer.
10. Commit no sexual offenses or any offense involving a minor.

11. Have no direct or indirect contact with the victim(s) or his/her family by telephone, computer, letter, in person, or via a third party.
12. Do not possess/access any sexually exploitive materials (as defined by defendant's treating therapist or community corrections officer); do not frequent adult bookstores, arcades, or places providing sexual entertainment; and do not access pornography, sexually explicit materials and/or information pertaining to minors via computer (i.e. Internet).
13. Do not contact "900" telephone numbers that offer sexually explicit material. Provide copies of phone records to community corrections officer upon request.
14. Do not have contact with any children under the age of 18 without the presence of an adult who is knowledgeable of this conviction and who has been approved by the defendant's supervising community corrections officer.
15. Do not loiter or frequent places where children congregate; including, but not limited to, shopping malls, schools, playgrounds and video arcades.
16. Abide by the curfew set by the community corrections officer.
17. Submit to periodic polygraph and plethysmograph exams at own expense at the request of the community corrections officer or any treatment provider.
18. Do not hitchhike or pick up hitchhikers.
19. Successfully complete crime-related treatment at the direction of the community corrections officer, including substance abuse and sex offender treatment, and follow all rules and recommendations of that treatment.



EXHIBIT B

1 don't want you to necessarily say what she said, but
2 what was that call about?

3 A. It was about that they possibly found who had done
4 it.

5 Q. Now, when you say "had done it," tell the jury
6 specifically what had happened to you.

7 A. I was raped at the Lacey Transit Center.

8 THE COURT: Now, I want the jurors to raise
9 your hand if you can't hear because we can adjust the
10 microphone so you can hear, how we can make the
11 volume better.

12 MR. SKINDER: Thank you, Judge.

13 BY MR. SKINDER:

14 Q. So do you recall the date when that had happened,
15 when you were raped?

16 A. No.

17 Q. Would it sound correct to you if I told you September
18 23rd --

19 MR. KAUFFMAN: Objection.

20 THE COURT: Sustained.

21 BY MR. SKINDER:

22 Q. Did this occur back when you were 16?

23 A. Yes, it did.

24 Q. And you said this happened at the Lacey Transit
25 Center, correct?

1 A. Yes.

2 Q. Do you remember how it was that you ended up at the
3 Lacey Transit Center?

4 A. My mom had dropped me off.

5 Q. And what was your plan when she dropped you off at
6 the Lacey Transit Center?

7 A. To take the bus to go downtown.

8 Q. And what were you going to do when you got downtown?

9 A. I was going to go visit my boyfriend at the time.

10 Q. And was your boyfriend at the time, was that someone
11 that your parents approved of?

12 A. No.

13 Q. Had you told them that you were going to see him
14 or --

15 A. No.

16 Q. -- or someone else?

17 A. Someone else.

18 Q. Who had you told them you were going to see?

19 A. I told them that I was going to go see a friend.

20 Q. And so your mother drops you off at the transit
21 center. Do you remember about what time of day that
22 would have been?

23 A. I don't remember.

24 Q. And how were you going to get home that day after you
25 went downtown?

1 A. How did I get home?

2 Q. What was the plan of how you were going to get home?

3 A. I don't remember.

4 Q. So when you got to Lacey Transit Center, I take it
5 did your mom just drop you off or did she wait for
6 your bus to get there?

7 A. No, she dropped me off.

8 Q. And were you familiar with what bus you were going to
9 be taking?

10 A. No.

11 Q. So what did you do when you got to the transit
12 center?

13 A. I was trying to find the bus schedule to see which
14 bus I needed to take and then I was -- I had turned
15 around and there were these guys right there behind
16 me, and so I had asked if they knew which bus would
17 take me to downtown and I was then told to shut up,
18 and I was forced into the men's bathroom and that's
19 when it took place.

20 Q. Before we get there, when you said you tried to
21 figure out what bus to take, was there a schedule
22 that you were looking at?

23 A. No. I was trying to find it.

24 Q. Okay. And that's when you saw this group of men?

25 A. Yes.

1 Q. Do you remember -- what do you remember about the
2 group of men?

3 A. They were in blue, blue clothing, blue shirts, blue
4 baggy pants, they had gold chains, blue bandanas, and
5 they were mixed, mixed race.

6 Q. Do you -- did you -- did you recognize any of these
7 men?

8 A. No.

9 Q. And when you said -- when you asked for assistance on
10 getting the right bus to downtown, you said that they
11 told you to shut up?

12 A. (Nods head.)

13 Q. How soon after that were you pushed into the
14 bathroom?

15 A. Right after I was told to shut up.

16 Q. Now, what did you -- what were you thinking as this
17 happened?

18 A. I don't remember.

19 Q. Did you -- how did you respond as you were starting
20 to be pushed?

21 A. I was struggling. I didn't say anything because I
22 didn't know. I didn't know what they had on them,
23 what the intentions were going to be.

24 Q. And so were you able to get away from them?

25 A. No.

1 Q. Do you remember which bathroom you were pushed into?

2 A. The men's.

3 Q. Was there anyone in that bathroom besides yourself
4 and the men that pushed you in there?

5 A. Not that I was aware of.

6 Q. What happened when -- as you get pushed into the
7 bathroom, what do you -- how do you remember what
8 happened next?

9 A. I remember being pushed all the way back to the last
10 stall which is a handicapped. I remember that door
11 flying open, flying in there, my arms being held, my
12 legs being held, my back being pushed down, my head
13 being pushed down.

14 Q. At this point, do you recall what was going on in
15 your mind, what your thoughts or emotions were?

16 A. No.

17 Q. You described that your head's being pushed down.
18 Are you able to see who's doing this to you at this
19 point?

20 A. No.

21 Q. What happened at that point?

22 A. At that point, that's when there was more than one
23 that took -- that had raped me, and then that lasted
24 maybe five minutes. And then after they were done, I
25 had waited till they had left and I had blood coming

1 out, but I stayed there to make sure they were gone
2 and I cleaned it up.

3 Q. Now, when you -- and there's some questions I have to
4 ask that I need you to be even more specific. When
5 you say that you were raped, what specifically --
6 what specifically in terms of biologically happened?

7 A. I was held down and . . .

8 Q. You said that you were bleeding from down there?

9 A. Uh-huh.

10 Q. Where were you bleeding from?

11 A. My vagina.

12 Q. And when you talk that you were held down and raped,
13 were you talking that something, against your will,
14 was put into your vagina?

15 A. Yes..

16 Q. Were you able to at any point see who was doing that
17 to you?

18 A. (Shakes head.)

19 THE COURT: You need to answer --

20 THE WITNESS: No.

21 THE COURT: -- with your voice, thank you.

22 BY MR. SKINDER

23 Q. And do you know what object was going in you?

24 A. It was a penis.

25 Q. And your memory is there was at least one but maybe

1 more than one person who put their penis into you?

2 A. Yes.

3 Q. You said this went on for a period of time. During

4 this approximate five minutes that you recall this

5 happening, were you held that entire time?

6 A. Yes, till the very end.

7 Q. How, again, if you can recall, any of the emotions or

8 feelings that were going through you while this was

9 occurring?

10 A. I was scared; I was numb.

11 Q. Now, you indicated that you were bleeding?

12 A. Yes.

13 Q. Did you feel pain at that point?

14 A. Not that I recall.

15 Q. Do you recall while you were being raped, was

16 anything said to you?

17 A. I was asked if it felt good.

18 Q. Did you say anything?

19 A. No.

20 Q. You said that you were scared, and again I might be

21 able to in my mind have thoughts as to why or the

22 reasons that you were scared, but I'm needing you to

23 say what were you specifically scared of. What were

24 your fears?

25 A. I was told to shut up, so I didn't know if they had

1 anything on them. I didn't know if I was going to
2 come out of there alive or --

3 Q. So when they left, how long did you wait in the
4 bathroom before you came out?

5 A. About five minutes.

6 Q. And you indicated that you tried to clean up the
7 area?

8 A. Yes.

9 Q. Did you have to readjust your clothing as well?

10 A. I don't remember.

11 Q. What was your -- you've already indicated that you
12 were scared about what was going to happen. When you
13 come out of the bathroom, can you take us to what you
14 were thinking as you come out of the bathroom?

15 A. That I needed to get out of there, I needed to get
16 away from there.

17 Q. Did you see these men --

18 A. No.

19 Q. -- when you came out?

20 A. No.

21 Q. I didn't ask you this at the time, but when you were
22 at the bus station before you get pushed into the
23 bathroom, you described you saw this group of men.
24 Did you see anybody else at the bus station?

25 A. There was a security guard with a newspaper over his

1 face sitting in his vehicle.

2 Q. And was he parked in one of the bus bays?

3 A. Yes.

4 Q. Do you remember where in relation to you?

5 A. He was right across from the men's bathroom.

6 Q. And at any point did you and he make eye contact?

7 A. No.

8 Q. When you came out of the bathroom, was the security
9 guard still there?

10 A. Yes, with the newspaper still over his face, yes.

11 Q. Did you go and talk to him?

12 A. No.

13 Q. Why not?

14 A. Because I keep to myself. I didn't want -- I didn't
15 want anybody to know about it. It would have gotten
16 back to my mom. I didn't want my mom hurt.

17 Q. You already talked about you were 16 at this time.
18 What school were you attending?

19 A. Olympia High School.

20 Q. How would you -- how would you describe before this
21 rape, so when you're 16, 15, 16 years old, how would
22 you describe your relationship with your family,
23 parents specifically, at that time?

24 A. My mom and I have always been close. Yes, we've had
25 disagreements, but who doesn't. My dad and I, not

1 close.

2 Q. Did your parents approve of your boyfriend at the
3 time?

4 A. No.

5 Q. Was that a source of discord? You guys -- was that
6 an issue that you guys would argue about?

7 A. Yes.

8 Q. Did you have at that period of time in your life, did
9 you have trust for law enforcement?

10 A. No.

11 Q. And I don't need you to necessarily give any specific
12 things, but in general, what was the source of that
13 distrust?

14 A. Not believing.

15 Q. You found they didn't believe you or you did not
16 believe them?

17 A. No. They didn't believe a lot of things that I would
18 tell them.

19 Q. And your boyfriend at that time, too, did he hold law
20 enforcement in a high regard?

21 A. I'm not understanding the question.

22 Q. Did he respect law enforcement to your knowledge?

23 A. Yes.

24 Q. Now, after -- going back now to when you come out of
25 the bathroom, and you said you felt you just needed

1 to get out of there, what did you do; where did you
2 go?

3 A. From that point in time, I don't remember. I know I
4 ended up downtown, I don't remember how I got there.
5 And same regards as to going home, I don't remember
6 how I got home.

7 Q. Did you -- how did your body feel by the time you got
8 home that night?

9 A. I don't remember.

10 Q. Do you remember when you got home, did you talk to
11 your parents?

12 A. No. Most of the time I would just go home and go to
13 my room.

14 Q. And so do you recall, then, going to school the next
15 day?

16 A. Yes.

17 Q. And do you recall how your body felt on that day?

18 A. I remember being in a lot of pain, coming out of the
19 bathroom, trying to walk to class.

20 Q. Did you tell -- how did you -- do you remember how
21 you got to school that next day?

22 A. No. I know my mom took me every day, but do I
23 remember? No.

24 Q. So at some point during the school day, did you tell
25 someone what had happened to you?

1 A. I ended up telling, yes.

2 Q. And did you end up going to the emergency room that
3 day?

4 A. Yes.

5 Q. Do you remember that, going to the emergency room?

6 A. No. I remember my mom coming to pick me up because
7 the nurse had called her, and I remember not being
8 able to sit down in the car and going to the
9 hospital.

10 Q. And again, just when you say you couldn't sit down,
11 why couldn't you sit down?

12 A. Because it hurt; I was in pain.

13 Q. When you -- you said earlier that you tend to keep to
14 yourself?

15 A. Yes.

16 Q. I guess what I'm going to ask for is, are you the
17 type of person to ask for help?

18 A. No.

19 Q. Can you explain to the jury again, not necessarily
20 getting into specific things in your life, but why
21 that is, why you're not someone that in general would
22 ask for help?

23 A. Just because it's hard for me. I've always been
24 brought up to do it yourself.

25 Q. So do you recall -- you recall that trip of going to

1 the emergency room with your mom?

2 A. Yes.

3 Q. And do you recall what happened when you got there?

4 A. I went straight to the bathroom.

5 Q. Did you see a doctor; do you recall?

6 A. Yes, I did.

7 Q. Did you also see a nurse?

8 A. Yes.

9 Q. Do you remember them taking samples from your body,
10 DNA samples?

11 A. No. I remember there being a brown box, but that's
12 it.

13 Q. Tell the jury what you remember of that experience at
14 the emergency room.

15 A. I remember going in. I remember spending most of my
16 time in the bathroom because I was in so much pain.
17 I felt like I had to take a bowel movement, and so I
18 was using Q-Tips and everything to try and relieve it
19 but it just made it worse. I did that until I heard
20 my mom say, you know, the doctor is here. So then I
21 come out, and I remember Detective Reinhold being
22 there, asking where my clothes were from the night
23 before, and that's about it.

24 Q. Do you remember them examining you?

25 A. I remember them swabbing and putting the swabs in a

1 brown box.

2 Q. Did that process hurt or did it not hurt?

3 A. I know I was in pain, but whether that process hurt,
4 I don't remember.

5 Q. So -- and did you have the -- did the medical people
6 talk to you about what happened, meaning about the
7 rape, did they ask you questions or --

8 A. I'm sure they did, but do I remember? No.

9 Q. Now, at some point, and I'm not expecting you to
10 remember, but do you remember if it was a short
11 period of time or a long period of time. How long
12 did you spend at the emergency room?

13 A. Maybe half-hour.

14 Q. And you remember, do you remember going home that
15 night?

16 A. No.

17 Q. Did they tell you about any injuries to your body
18 that you recall?

19 A. I was told I was torn.

20 Q. Did -- from your memory, did that take a period of
21 time? How quickly do you recall that situation
22 healing?

23 A. I don't know. I know I was applying some like wax
24 bullets for at least a couple months.

25 Q. Do you recall, then, a couple days later going for an

1 appointment to the sexual assault clinic and seeing a
2 nurse named Nancy Young?

3 A. No.

4 MR. KAUFFMAN: Objection, leading.

5 THE COURT: I'll allow the question.

6 BY MR. SKINDER:

7 Q. Do you recall that?

8 A. No.

9 Q. Do you recall having follow-up medical appointments?

10 A. No.

11 Q. So Detective Reinhold, you said, met with you at the
12 hospital for a period of time as well?

13 A. Yes.

14 Q. And you talked to her briefly?

15 A. Yes.

16 Q. Do you recall her taking a statement from you?

17 A. At that point in time, no.

18 Q. Now, I'm going to ask you after the rape and after
19 you were seen you go back home. Shortly thereafter
20 did you make any big decisions regarding your life at
21 that point? Specifically what I'm asking, did you
22 decide to stay at home, did you decide to leave home?

23 A. No, because I was specifically told that I was not
24 believed. I had decided it was time for me to leave.

25 Q. And when you say you weren't believed, you had talked

1 about the fact that your parents didn't approve of
2 your boyfriend who was older than you?

3 A. Right.

4 Q. What was -- what was your belief the origin of why
5 you weren't believed; what did you think it had to do
6 with?

7 A. Because -- because I wouldn't tell them the truth
8 about being with my boyfriend because of his age.

9 Q. And so when you decided it was time to leave, where
10 did you go?

11 A. I left for Tacoma.

12 Q. And what was in Tacoma; why would you go there?

13 A. I went to be with my boyfriend.

14 Q. Now, you and this boyfriend are no longer together,
15 correct?

16 A. Right.

17 Q. Did you ultimately have children with him?

18 A. Yes.

19 Q. And you said you had four children total. How many
20 children was he the father of?

21 A. Two.

22 Q. And is he, meaning that boyfriend, is he involved at
23 this time in your life?

24 A. No.

25 Q. Do you even know where he is?

EXHIBIT C

e-filed
2/8/10

1
2
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6
*IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR
THE COUNTY OF THURSTON*

7
8
**THE STATE OF WASHINGTON,
Plaintiff,**

9
vs.

10
**CHARLES J. DAVIS,
Defendant.**

NO. 09-1-00963-9

DECLARATION OF JENNY ANDERSON

11
I. DECLARATION

12
I, JENNY ANDERSON, HEREBY STATE AS FOLLOWS:

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

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

24
25
**OFFICE OF
ASSIGNED COUNSEL**
1520 Irving St. SW, Suite A
Tumwater, WA 98502
(360) 754-4897

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

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

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

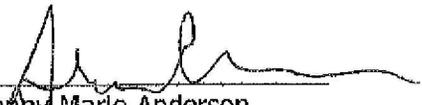
23 . When we were in Tacoma, Kristi never mentioned being raped in September of 2001, in
24
25

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

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

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

7 Signed this 8th day of FEBRUARY, 2010.

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

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

EXHIBIT D

EXHIBIT E

CHRISTINE O. GREGOIRE
Governor



JOHN R. BATISTE
Chief

STATE OF WASHINGTON
WASHINGTON STATE PATROL

2502 112th Street East, Rm 273 • Tacoma, WA 98445-5104 • (253) 536-4280 • www.wsp.wa.gov

CRIME LABORATORY REPORT

AGENCY: Lacey Police Department
OFFICER: Arline Scott
VICTIM: Caver, Kristi
SUSPECT: None listed

LABORATORY NO.: 301-002727
AGENCY NO.: 2001-5575
REQUEST NO.: 0002

A male DNA typing profile was developed from the underpants from Item 1 (please see previous report with this same laboratory number). This profile was searched against the Washington State Patrol Combined DNA Index System (CODIS) and the National DNA Index System (NDIS) of CODIS. A match between this profile and Charles J. Davis (State ID # WA17157032, DOB: 03/04/63, DOC # 318058) was declared. Submission of a reference sample from Charles J. Davis should be made to the Washington State Patrol Tacoma Crime Laboratory to confirm this match. Charles J. Davis whereabouts are unknown.

Handwritten signature of William B. Dean in black ink.

William B. Dean, Forensic Scientist

4-1-09

Date

cc Reinhold: APR 1 6 2009

EXHIBIT F

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
09 JUN -3 PM 4:49
BETTY J. GOULD, CLERK
BY _____
DEPUTY

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

STATE OF WASHINGTON,
vs. Plaintiff,

NO. 09-1-00963-9

CHARLES J. DAVIS
DESC: B/ M/506/175/BRN/BLK
DOB: 03/04/1963
SID: WA17157032 FBI: 571740LA0
BOOKING NO.
PCN NO.
Defendant.

INFORMATION

JOHN C. SKINDER
Deputy Prosecuting Attorney

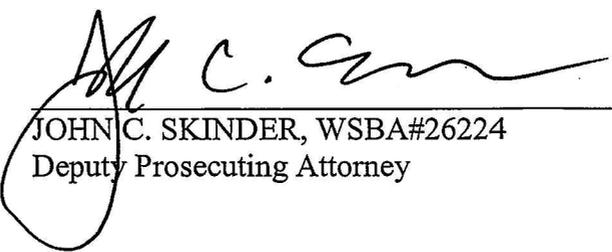
Jointly Charged with Co-Defendant(s):
N/A

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

**COUNT I: RAPE IN THE FIRST DEGREE, RCW 9A.44.040(1)(b) and/or (1)(c) -
CLASS A FELONY:**

In that the defendant, CHARLES J. DAVIS, in the State of Washington, on or about September 23, 2001, did engage in sexual intercourse with K.C. by forcible compulsion where the defendant or an accessory kidnapped the victim and/or inflicted serious physical injury.

DATED this 3rd day of June, 2009.



JOHN C. SKINDER, WSBA#26224
Deputy Prosecuting Attorney

INFORMATION

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

EXHIBIT G

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THE COURT: Okay. Let's move on then to the Davis matter.

MR. SKINDER: Thank you, Your Honor.

THE COURT: I'll indicate that the first thing received was the state's memorandum regarding the rape shield law along with supplemental authorities. Today I received a document on letterhead from the Office of Assigned Counsel that purports to be a declaration of one Jenny Anderson in regard to the matter.

MR. KAUFFMAN: Yes, Your Honor. Your Honor, there should further be in the Court's file a brief filed by Mr. Davis or myself on behalf of Mr. Davis from the 19th of January in support of the defense's request that --

THE COURT: And that is in the file. That's dated January 19th and it was filed on that same date.

MR. KAUFFMAN: Okay.

THE COURT: Okay. So I think this is the defendant's motion.

MR. KAUFFMAN: It is, Your Honor. I am requesting that essentially in large part the testimony as proffered in the declaration of Ms. Jenny Anderson be admitted at the trial of Mr. Davis. The charge as the state knows is rape. The defense listed in the omnibus order that was filed in this case is that of consent, that the alleged victim in

1 this case consented to the sexual act that has been
2 alleged, and in particular I expect there to be evidence at
3 trial to the effect that this was an act of prostitution on
4 the part of the alleged victim. The testimony or the
5 statements put forth in Ms. Anderson's declaration are
6 relevant to that question. In particular she has
7 knowledge, as she put forth in the declaration, that within
8 the timeframe of this incident back in 2001, inside
9 approximately one month from the date at issue here that
10 Ms. Caver was conducting herself in a way in the city of
11 Tacoma that Ms. Anderson interpreted to be consistent with
12 acts of prostitution. In particular, as the Court can see
13 from the affidavit, Ms. Caver was observed, or the alleged
14 victim was observed contacting men that it did not appear
15 to Ms. Anderson she knew prior to the contact, having
16 discussions with them, getting into cars with them and then
17 departing. The other facts I will simply state are in the
18 declaration and so I maintain initially that that evidence
19 is relevant to the question of consent as involved in this
20 trial here.

21 That is the first issue under the rape shield law, that
22 is to say whether the evidence is initially relevant, and
23 in the case law that I have reviewed, I have determined
24 that while a showing of previous sexual activity on the
25 part of an alleged victim or a victim in and of itself is

1 not relevant, if there are factual similarities to the
2 allegation and to the evidence that is sought to be
3 admitted, that the evidence can be considered relevant
4 under law.

5 The factual similarities that I would allege in this
6 case exist is the public nature of the encounter between
7 Mr. Davis and Ms. Caver as alleged in the state's
8 information and materials. That would be a trope, if you
9 will, or a commonality between the evidence presented
10 against Mr. Davis and what Ms. Anderson's declaration
11 contains with regards to Ms. Caver's conduct in Tacoma
12 close in time to the incident. As I note in my brief, the
13 association with Mr. Cureton is something that Ms. Anderson
14 felt was significant in her declaration, and I would note
15 that the age of the men involved would all appear to be
16 greatly in excess of Ms. Caver's age as well. So initially
17 under the relevance prong I am asking that this court find
18 that the proffered evidence is relevant.

19 The second question that this case involves or that the
20 court must deliberate on is whether the probative value of
21 this evidence is substantially outweighed by any prejudice
22 to the fact-finding itself. The case law makes clear that
23 this is not prejudice to the person of the alleged victim
24 but rather whether anything about the evidence to be
25 admitted is such that it will tend to push the fact-finder

1 or the fact-finding proceeding towards an improper verdict
2 or toward a jury reaching an improper conclusion based on
3 the evidence. I would note a couple of facts which in my
4 view mitigate whatever prejudice made here. One is the
5 time between the alleged incident and today. Mr. Davis's
6 accused of an act which is said to have arisen in September
7 2001. That was approximately nine years ago. And the
8 distance in time is one mitigating factor I submit so far
9 as reducing any possible prejudice that may adhere in the
10 presentation of this evidence to a jury.

11 I maintain that the relevance of this evidence is such
12 that the probative value of it does in fact substantially
13 outweigh whatever prejudice may adhere behind admitting
14 this information. It essentially goes to the question of
15 consent, and we are asking that the jury be allowed to hear
16 this information, not necessarily that the jury credit it.
17 I think that given the distance in time from these acts as
18 alleged and now, a jury would not be swayed in their
19 deliberations such that they could not make a rational and
20 a dispassionate conclusion based on the evidence that the
21 defense is seeking to admit.

22 The last issue before the Court is whether the denial of
23 the state's or the defense motion in this regard would
24 result in the denial of substantial justice to Mr. Davis,
25 and I submit that it would. Mr. Davis is charged with a

1 very serious offense dating from September 23rd, 2001, and
2 as I indicated, we are asking that the jury be allowed to
3 hear this information under the theory that it is relevant
4 and that it is not unduly prejudicial. The stakes are
5 high, if you will, and I would ask that this court permit
6 Mr. Davis to present this evidence to the jury during his
7 trial so that the jury can have, if you will, a complete
8 picture of what occurred in this case.

9 THE COURT: I may have some questions for you at
10 your rebuttal argument. If you and your client would like
11 to have a seat back there, that would be fine.

12 MR. KAUFFMAN: Thank you.

13 THE COURT: Hear from Mr. Skinder on behalf of the
14 state.

15 MR. SKINDER: Thank you, Your Honor. Your Honor,
16 the state is clearly opposed to the admission of this offer
17 by the defense. Just to recap for the Court, this involves
18 an allegation correctly from September of 2001 that the
19 victim in this case -- who out of respect for her privacy
20 I'll refer to as KC. KC was at the Intercity Transit. She
21 was pulled into a bathroom by a number of men, was forcibly
22 raped. She suffered vaginal tearing and bled profusely.
23 Based upon pain that she was continuing to suffer, she
24 reported the incident, went in and was seen by medical
25 personnel, underwent a rape kit. During that rape kit they

1 here, and that is to say inside of one month either way.
2 In *State v. Gregory* the evidence rule inadmissible had
3 taken place at least a year prior, and for that reason I
4 would submit the court found that it was not relevant. The
5 evidence that is proffered here is said to have taken place
6 within approximately 30 to 45 days at the outside of the
7 incident that's alleged against Mr. Davis, so I would ask
8 that this court rule that this evidence is admissible. As
9 I indicated before, the jury will be in a position to
10 either credit this evidence, to determine whether it is
11 persuasive to them and to assess its quality one way or the
12 other.

13 THE COURT: Mr. Kauffman, you've heard the argument
14 of Mr. Skinder that there is no affidavit that would
15 suggest that prostitution took place in the situation that
16 is the subject to this charge. Do you agree with that?

17 MR. KAUFFMAN: I do, yes.

18 THE COURT: So what evidence do I have to consider
19 that there is somehow some relevance between these two
20 circumstances and the issue of prostitution?

21 MR. KAUFFMAN: Yes, Your Honor. The tension, if you
22 will, with regards -- it is not contested that at the time
23 he was contacted by police in 2009 that Mr. Davis made no
24 statement to the effect that what occurred on the 23rd of
25 September, 2001 was an act of prostitution. He stated it

1 was consensual. Since that time Mr. Davis has been
2 appointed an attorney and has exercised his right to remain
3 silent. I would concede that the probative value of
4 Miss Anderson's testimony or the statements of
5 Miss Anderson increase considerably or would increase
6 considerably were there to be an affidavit at this time
7 from Mr. Davis to the effect that this was an act of
8 prostitution, and I will concede that the absence of that
9 affidavit at this time reduces the relevance of
10 Miss Anderson's proffered testimony.

11 Mr. Davis has the right to remain silent, and it is
12 Mr. Davis's choice whether to testify at his trial. In my
13 -- I am not at liberty short of permission from Mr. Davis
14 to place on the record the content or the substance of our
15 conversations leading up either to today's hearing or to
16 the trial in this matter. If this court is concerned with
17 the lack of testimony or the lack of an affidavit from
18 Mr. Davis at this time, I would submit that one way to
19 address that concern is to provisionally admit this
20 evidence in light of corroborating testimony by Mr. Davis
21 should he testify at trial.

22 THE COURT: Okay. Thank you.

23 Counsel, here's the way I see the matter here today.
24 RCW 9A.44.020, the so-called rape shield statute, is based
25 upon a public policy that encourages people to come forward

1 and report situations that are otherwise very private and
2 certainly embarrassing to have to talk about. And one of
3 the side issues of a person talking about a sexual assault
4 is other aspects of their sexual behavior or allegations of
5 sexual behavior.

6 In this particular case I am told that an incident took
7 place at a bus station in the city of Olympia, and that it
8 was reported as a violent rape, that there was evidence
9 gained by police in the investigation of injury to the
10 victim that was consistent with a violent sexual act, and
11 that this case has languished for many years based upon no
12 DNA match, but following the defendant's arrest on another
13 matter his DNA proved to be the same as that present in
14 samples taken from the alleged victim in this case, that
15 the defendant gave a statement indicating that he had only
16 vague recollection of this situation, but believed that he
17 did have sex with an individual who he believed to be 18 or
18 so. Evidence is that this victim was 16 at the time I
19 believe. In any event, he believed that he did have sexual
20 contact with an individual and that it was consensual.

21 Subsequent to that the investigation of the defense has
22 put them in contact with a young lady who has given an
23 affidavit. Her name is Jenny Anderson. She acknowledges
24 that she ran away from home to the Hilltop area in Tacoma
25 and that the alleged victim in this case was with her.

1 This situation took place about a month after the alleged
2 rape had taken place. Miss Anderson then in an affidavit
3 details certain occurrences that she indicates that she
4 observed which gave her pause for some suspicion that the
5 alleged victim in this case may have been engaging in
6 prostitution. She also indicates that the alleged victim
7 in this case had a sexual relationship with a boyfriend who
8 was considerably older than her. I've also been given
9 information by the state that this boyfriend was the father
10 of two children with the alleged victim subsequently.

11 So I'm called upon to look to see whether the rape
12 shield prohibition in this case should be overcome by the
13 evidence presented. Subsection (3)(d) of that statute
14 indicates that such other sexual behavior would be
15 admissible if several conditions are met, first that it's
16 relevant to the issue of the victim's consent, that its
17 probative value substantially outweighs any prejudice, and
18 that exclusion of the evidence would result in the denial
19 of substantial justice to the defendant.

20 I guess there is one other issue that I should at least
21 mention, and I did hear testimony -- I'm sorry. I did hear
22 argument that there was an allegation by the alleged victim
23 in this case of rape by another group of men and that that
24 was never reported to law enforcement. The affiant that
25 I've spoken of earlier, Miss Anderson, indicates that she

1 was told that this was what she should tell the boyfriend
2 if he ever questioned where the alleged victim was at that
3 time.

4 Weighing the facts in each of these cases I'll indicate
5 first of all that there is no affidavit that would indicate
6 that an act of prostitution was the basis for any consent
7 in the present case. Mr. Kauffman has candidly told me
8 that that's a matter of tactic that he's going to have to
9 discuss with his client as this case unfolds. He suggests
10 that absent such a affidavit or statement by the defendant
11 in this case this court can still consider the impact of
12 such information on the issue of relevance. He concedes
13 that it would be less relevant, but apparently maintains
14 that it would nevertheless be relevant.

15 I'm finding first of all that I find no relevance to the
16 facts in the present case, and that is the issue of consent
17 in the posture of the case at the present time, there being
18 no allegation that prostitution was involved. I'll further
19 indicate that were that not the case, had an act of
20 prostitution in the current matter been alleged, I would
21 still have to weigh the value, or the relevance I guess I
22 should say, of having sex with others as acts of
23 prostitution in Tacoma at a future time, approximately a
24 month or so later. As to that, I'll indicate that while
25 Miss Anderson has expressed her opinion, that is a

1 subjective opinion and that that opinion is outside her
2 personal knowledge and for those reasons would not be a
3 sufficient basis for my finding relevance, even in a case
4 that there was an allegation that rape took place in the
5 charged situation here in the city of Olympia.

6 Secondly, as to the probative value versus the
7 prejudicial effect, it is clear that the actions of a
8 16-year-old girl running away and prostituting herself, if
9 believed by the jury, would be very prejudicial. Whether
10 or not there's probative value one might ask is it a common
11 thing for victims of sexual abuse to act out and to often
12 act out in sexual ways. I don't have any expert testimony
13 one way or the other in this case, but it seems to this
14 court that the prejudicial effect would far outweigh any
15 probative value as to whether or not there was consent in
16 this particular case.

17 Finally, I do not find that exclusion of this
18 information would result in the substantial denial of
19 justice, or the denial of substantial justice, however that
20 should be phrased, in light of the subjective nature of
21 Miss Anderson's testimony . For those reasons I'm denying
22 the defense motion to allow this testimony to be presented
23 to a trier of fact. Absent more information -- I'm not
24 fishing for more information, but I'm indicating that my
25 ruling today is based on the posture of the case before me

1 at this time. If circumstances change, could the matter be
2 brought back? Well, there could at least be an argument
3 that I should consider additional facts if that were the
4 case, but I'm not going to speculate as to whether or not
5 that might or would occur. In any event, based on the
6 information before me today I am denying the defendant's
7 motion, and this information will not be presented to the
8 jury.

9 MR. SKINDER: Thank you.

10 THE COURT: I'll sign a document, findings of fact
11 and conclusions of law, once that's prepared by the defense.

12 MR. SKINDER: Very good.

13 THE COURT: Mr. Kauffman.

14 MR. KAUFFMAN: Yes, Your Honor.

15 THE COURT: You were standing. I thought maybe you
16 had something else to say.

17 MR. KAUFFMAN: No, Your Honor.

18 THE COURT: All right. Thank you.

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EXHIBIT H

1 THE COURT: I'm going to ask the jury be
2 briefly excused.

3 (The following proceedings were
4 held in open court outside the
presence of the jury.)

5 THE COURT: And I guess there's no hearsay
6 objection to any of this discussion?

7 MR. SKINDER: Correct. It's the defendant's
8 version of events.

9 THE COURT: The defendant's story is subject
10 to hearsay as well.

11 MR. SKINDER: That's true.

12 THE COURT: But there's no problem. If
13 there's no problem, we'll proceed.

14 MR. SKINDER: Well --

15 THE COURT: We'll proceed.

16 MR. SKINDER: We'll proceed.

17 (The following proceedings were
18 held in open court in the
presence of the jury.)

19 THE COURT: Court's back in session. Please
20 be seated.

21 BY MR. KAUFFMAN:

22 Q. Mr. Davis, you indicated that -- in your conversation
23 you indicated that the conversations with this
24 person, who you've described as the alleged victim,
25 that sex was a part of her job?

1 A. Yes..

2 Q. And what did that indicate to you?

3 A. Rephrase that.

4 Q. When she indicated that sex was a part of her job,

5 what was your understanding? What did you think that

6 she meant?

7 A. Oh, I knew what she meant but I just couldn't believe

8 it. This young lady was -- the way she was dressed

9 and everything, she didn't seem to me like she was a

10 prostitute or streetwalker, basically.

11 Q. Now, did you -- let me move forward briefly. Did you

12 have sex with this person, Mr. Davis?

13 A. Yes.

14 Q. And was any agreement made between you and this

15 person with regards to that sexual encounter that you

16 indicated?

17 A. Yes.

18 Q. What was the nature of that agreement, Mr. Davis?

19 A. Well, the agreement was that I gave her \$25 and I

20 was -- we was going to buy crack from her boyfriend

21 once we got downtown. I was supposed to buy \$40 worth

22 of crack from her boyfriend and split it with her

23 because I didn't smoke at the time.

24 Q. So this is the agreement that was struck between you

25 and this person that you met?

1 A. Yes.

2 Q. Now, what happened after this agreement was struck?

3 A. Well, we decided to -- where we was going to go,
4 where was we going to go to access because at the
5 time I didn't have a place, and evidently she was in
6 an area that she didn't know. So I decided, well,
7 let's go in the men's restroom, you know, and yeah.

8 Q. And did you do that, Mr. Davis?

9 A. Yes.

10 Q. And did she similarly enter the restroom with you?

11 A. No.

12 Q. No. Explain, please.

13 A. Well, we set there and we thought about it because
14 there were two security guards, one in the truck and
15 one walked around. So we came to agreement that I
16 will go in first to make sure that no one was in
17 there, and she would stand by the bus stop, and once
18 the other security guy moved off she would come in.

19 Q. So she ultimately did follow you into the restroom?

20 A. Yes.

21 Q. Now, Mr. Davis, is that where you then had sex with
22 this person?

23 A. Yes.

24 Q. And do you recall where in particular in the restroom
25 you were located?

EXHIBIT I

1 general public. Does anyone have any objection to
2 that process?

3 MR. KAUFFMAN: No, Your Honor.

4 THE COURT: We have a spectator that we're
5 going to need to give up the seat for the jury, when
6 our court is in session.

7 (The prospective jurors enter the courtroom.)

8 THE COURT: Please be seated. My name is
9 Paula Casey. I'm the judge who's going to preside
10 over the case today.

11 We are convened in the matter of State of
12 Washington vs. Charles Davis. This is a criminal
13 case that has been brought by the prosecuting
14 attorney, and the prosecutor's office today is going
15 to be represented by Mr. John Skinder.

16 And, Mr. Skinder, could you stand and introduce
17 who's with you today?

18 MR. SKINDER: Thank you, Your Honor. Good
19 morning. My name is John Skinder. I'm a Deputy
20 Prosecutor with Thurston County.

21 This is Detective Bev Reinhold, to my left, from
22 the Lacey Police Department. Good morning.

23 THE COURT: The defendant in this matter is
24 represented by Mr. David Kauffman.

25 And, Mr. Kauffman, would you please stand and

EXHIBIT J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE: THE PERSONAL RESTRAINT)
OF CHARLES DAVIS)

CHARLES DAVIS)
Petitioner,)

v.)

STATE OF WASHINGTON)
Respondent.)

NO. _____

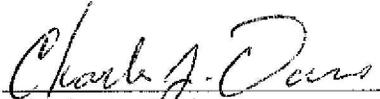
DECLARATION OF CHARLES DAVIS

I, Charles Davis, do declare under penalty of the laws of the State of Washington that the following is true to the best of my ability:

1. I am the Respondent in the above-entitled cause;
2. On June 3, 2009, I was charged with one count of Rape in the First Degree in Thurston County Superior Court;
3. On February 10, 2009, a First Amended Information was filed, charging Rape in the Second Degree in the alternative;
4. My case was tried to a jury;
5. Jury selection began on March 15, 2010. I was present in the courtroom during the entire proceeding;
6. I had previously written to the NAACP, Court Watch organizations, and local colleges to ask people to attend my trial and support me;
7. There was a young female in her 20s who was present in the courtroom that morning prior to the jury coming in;

8. I recall that when the judge came out, she told the woman that she would need to give her seat to the jury members coming in, or words to that effect;
9. The woman, as I recall, did not immediately move, prompting the bailiff to walk over to her;
10. I saw the bailiff whisper to her, and then I saw the woman get up and walk out of the courtroom;
11. I presume, based on what the judge had said, and based on the woman's actions, that the bailiff asked her to leave;
12. The woman left the courtroom and did not come back;
13. I was disappointed, as I had asked for people to come to support me, and I believe that she had come to watch my trial at my request;
14. At no time did the court advise the woman that she was free to remain in the courtroom.

Dated this 31st day of January, 2013.



Charles J. Davis

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE: THE PERSONAL RESTRAINT)	
OF CHARLES DAVIS)	
)	NO. _____
CHARLES DAVIS)	
)	PERSONAL RESTRAINT PETITION
Petitioner,)	
)	
v.)	
)	
STATE OF WASHINGTON)	
)	
Respondent.)	
_____)	

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, Charles J. Davis, DOC #318058, 1301 N Ephrata Ave PO Box 769 Connell, WA 99326,
(Full name and current address)

Apply for relief from confinement. I am x am not _____ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: Judgment and Sentence.

(Identify type of court order)

1. The court in which I was sentenced is: Thurston County Superior Court.
2. I was convicted of the crime of: Rape in the First Degree.
3. I was sentenced after (check one) Trial x Plea of Guilty _____ on May 6, 2010.
Date of Sentence
4. The Judge who imposed sentence was The Honorable Paula Casey.

5. My lawyer at trial court was David Kauffman, 4509 Interlake Ave N # 133 Seattle, WA 98103 (Currently Inactive).

Name and Address if known

6. I did x did not _____ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: Court of Appeals Division I.

Name of court or courts to which appeal took place

7. My lawyer for my appeal was: Patricia Pethick, PO Box 7269 Tacoma, WA 98417-0269.

Name and address if known or write "none"

The decision of the appellate court was _____ was not x published. (If the answer is that it was published, and I have this information) the decision is published in _____

8. Since my conviction I have x have not _____ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was Washington State Supreme Court. Relief was denied on January 4, 2012.

Name of court

Date of Decision (or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was Patricia Pethick, PO Box 7269 Tacoma, WA 98417.

Name and address if known

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: _____

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc). I claim that I have _____ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

_____ Ground
(First, Second, etc)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): **See attached Brief.**
2. The following facts are important when considering my case. (After each fact statement put the name of the person or persona who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) **See attached Brief.**
3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known". **See attached Brief.**
4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known") **See attached Brief.**
5. This petition is the best way I know to get the relief I want, and not other way will work as well because: **See attached Brief.**

C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have \$ 20 dollars in my prison or institution account.
3. I do do not ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.
4. I am am not employed. My salary or wages amount to \$ _____ a month. My employer is _____
Name and address of employer
5. During the past 12 months I did _____ did not get any money from a business, profession or other form of self-employment. (If I did, it was _____
Type of self-employment
And the total income I received was \$ _____.
6. During the past 12 months I:
Did Did Not Receive any rent payments. If so, the total I received was \$ _____

Did ___ Did Not Receive any interest. If so, the total I received was \$ _____

Did ___ Did Not Receive any dividends. If so, the total I received was \$ _____

Did ___ Did Not Receive any other money. If so the total I received was \$ _____

Do ___ Do Not Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is \$ _____.

Do ___ Do Not ___ Have any savings or checking accounts. If so, the total amount in all accounts is \$ _____

Do ___ Do Not Own stocks, bonds or notes. If so, their total value is: \$ _____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
<u>None</u>	

8. I am ___ am not married. If I am married, my wife or husband's name and address is:

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
<u>None</u>		

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
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D. REQUEST FOR RELIEF:

I want this court to:

Vacate my conviction and give me a new trial

Vacate my conviction and dismiss the criminal charges against me without a new trial

Other: Alternatively, set a reference hearing

E. OATH OF PETITIONER

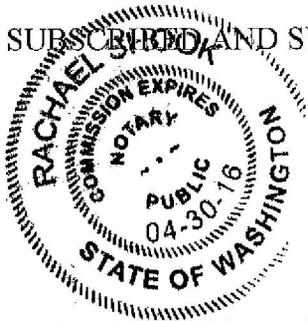
STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Charles J. D...

(Signature Here)

2013. SUBSCRIBED AND SWORN to before me this 31st day of January



Rachael Sheen

Notary Public in and for the State of Washington
Residing at Spokane

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary: _____

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

DATED This _____ day of _____, 200__.

(Signature Here)