

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

JAKE JOSEPH MUSGA,

Petitioner,

vs

STATE OF WASHINGTON,

Respondent.

NO. _____

COURT OF APPEALS DIVISION II

PERSONAL RESTRAINT PETITION

1. IDENTITY OF PETITIONER.

JAKE JOSEPH MUSGA, defendant below and hereinafter petitioner, in Pierce County Superior Court Superior Court No. 13-1-01369-1, is the petitioner in this action.

2. STATUS OF PETITIONER.

Petitioner is incarcerated in the Department of Corrections at the Washington State Penitentiary located in Walla Walla, Washington. Petitioner was sentenced in Pierce County Superior Court on November 21, 2013 to 608 months on count 1 and 258 months to life on count 2 and did not file a direct appeal. Petitioner was not advised of his right to direct appeal as required by CrR 7.2[b]. This personal restraint petition is timely filed.

Thus, petitioner is "under restraint" pursuant to Rule of Appellate Procedure [RAP] 16.4(b) and is subject to a disability from criminal conviction entitling him to use of the personal restraint petition.

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2 3. GROUNDS FOR RELIEF.

3 Rule of Appellate Procedure [RAP] 16.4(c) sets forth the grounds for relief upon which
4 a petitioner may base a personal restraint petition. In pertinent part, petitioner is entitled to
5 relief from his conviction under RAP 16.4(c) where:

6 (2) The conviction was obtained or the sentence or other order entered in
7 a criminal proceeding or civil proceeding instituted by the state or local
8 government was imposed or entered in violation of the Constitution of the
9 United States or the Constitution or laws of the State of Washington;

10 (3) Material facts exist which have not been previously presented and
11 heard, which in the interest of justice require vacation of the conviction,
12 sentence, or other order entered in a criminal proceeding or civil proceeding
13 instituted by the state or local government; (6) The conditions or manner
14 of the restraint of petitioner are in violation of the Constitution of the United
15 States or the Constitution or laws of the State of Washington.

16 Further, there are no other remedies which available to petitioner under the
17 circumstances. RAP 16.4(d).

18 4. STATEMENT OF THE CASE.

19 On April 3, 2013, the State of Washington charged Jake Joseph Musga in Pierce County
20 Cause No. 13-1-01369-1 with the crime of first degree [felony] murder and first degree child
21 rape.¹
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25 ¹ Appendix A – Information.

1 Mr. Musga entered guilty pleas to the original information² charging count one, murder
2 in the first degree³, RCW 9A.32.030[1][c] with aggravating circumstances pursuant to RCW
3 9A.535[3][a], [b], [y], as well as a non-statutory statutory aggravator that “the defendant’s
4 conduct during the commission of this offense resulted in multiple injuries or more severe
5 injuries that [sic] typically associated with the commission of this offense”; as well as to count
6 two⁴, child rape in the first degree, RCW 9A.44.073, with aggravating circumstances pursuant
7 to RCW 9A.535[3][a], [b].

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9 Subsequent to charging, Mr. Musga’s parents retained attorney Keith Hall to represent
10 petitioner for the fee of \$105,000 with another \$30,000 for investigation.⁵ Mr. Hall informed
11 the Musgas that because he did not handle felony cases, he would need to associate attorney
12 Richard Warner, who in turn informed the Musgas that if the case became a death penalty case
13 they would need to hire another attorney because he did not handle such cases.⁶

14 After arraignment, defense counsel met with Mr. Musga several times. These visits are
15 documented and show limited communications.⁷ There was no telephonic contact or mail
16 contact.⁸

17 Although Mr. Musga made repeated requests to see the discovery in his case, his
18 attorneys did not show it to him. *Id.* They did show him autopsy photos *but not the autopsy*
19 *report*, Laura Colley’s Facebook friends, and a transcript of his statement to police. *Id.* Other
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22 ² *Id.*

23 ³ Appendix B, Statement of Defendant on Plea of Guilty to First Degree Murder.

24 ⁴ Appendix C, Statement of Defendant on Plea of Guilty to First Degree Child Rape.

25 ⁵ Appendix D - Retainer.

⁶ Appendices – Appendices – E -Declaration of Janet Musga; G - Declaration of Jake Musga; D-Retainer.

⁷ Appendix H - Table of Dates/Hours of Visits of Defense Counsel to Mr. Musga in Pierce County Jail. NOTE:
Times include check-in time at jail, which can run up to 15 minutes.

⁸ Appendix G - Declaration of Jake Musga.

1 than these items, Mr. Musga did not know at any time during the superior court proceedings
2 what was in the State's discovery materials. *Id.*

3 Over the summer, defense counsel negotiated the case with the deputy prosecutors. The
4 progress of negotiations was not shared with Mr. Musga. *Id.* They ultimately received an
5 "offer" for Mr. Musga to plead guilty as charged with the prosecutors making an "open
6 recommendation – exceptional sentence."⁹ The prosecutors placed a time limit on the plea
7 offer. *Id.*

8 On August 13, 2013, attorney Richard Warner sent an email¹⁰ to co-counsel Hall
9 informing him that there is an "offer" on the table that has an 8/30 deadline. "It is not much of
10 an offer but the State is threatening Agg, not a death penalty case, but the only alternative is
11 LWOP [life without parole]." Warner asked Hall if he had relayed this offer to Mr. Musga. He
12 also inquired whether they should "get it on the record that we don't have any forensics or
13 DNA." Warner noted the offer expired on August 30, 2013, and described it as a "game
14 changer." *Id.*

15 Defense counsel failed to mention this "game-changing" offer to Mr. Musga and
16 continued his case a date later for the reason that the lab results had not been received¹¹.

17 This offer was confirmed in an email from deputy prosecutor Jared Ausserer on August
18 14, 2013.¹²

19 On August 29, 2013, Warner and Hall met with the deputy prosecutors to discuss the
20 offer.¹³

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24 ⁹ Appendix I - Email from Keith Hall to Richard Warner with Plea Offer

¹⁰ Appendix J - Email dated August 13, 2013 from Warner to Hall, Snyder.

¹¹ Appendix K - Email dated August 14, 2013 from Keith Hall.

¹² Appendix L - Email dated August 15, 2013 from Jared Ausserer to Warner and Hall.

¹³ Appendix M - Email exchanges between Warner/Hall and Williams dated August 23, 2013.

1 Later that day, Warner and Hall sent an email to the prosecutors informing them that
2 they had met with Mr. Musga and that “there will be a plea.”¹⁴ The jail visitor log documents
3 that Warner and Hall visited Mr. Musga from 13:23 to 14:17, minus check-in time and time to
4 walk to his unit and wait to be placed in an interview room with Mr. Musga¹⁵.

5 After Mr. Musga accepted the plea offer, the State modified the offer and insisted the
6 plea be a factual plea only rather than a Newton¹⁶ plea.¹⁷

7 Warner and Hall were concerned about this change but decided it was of no real
8 consequence.¹⁸

9 The plea was scheduled for September 9, 2013. Warner agreed to send the draft plea
10 documents to Williams for review and approval in response to her assertion that she could not
11 set the plea on the calendar without them.¹⁹

12 After notifying the State that Mr. Musga would enter guilty pleas, his attorneys spent
13 about one hour going over the plea paperwork with him on Friday, September 6, 2013, three
14 days before his Monday plea.²⁰

15 At time of entry of the plea, the court advised Mr. Musga that paragraph 4[b] of each
16 statement of defendant on plea of guilty set forth the elements of the crime that the State would
17 have to prove in order to obtain a conviction.²¹ Mr. Musga’s plea statement for first degree
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22 ¹⁴ Appendix N - Email from Warner to Williams and Ausserer dated August 29, 2013.

23 ¹⁵ Appendix H - Schedule of Attorney Visits..

24 ¹⁶ *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

25 ¹⁷ Appendix O - Email from Williams to Hall, Ausserer dated August 29, 2013.

¹⁷ Appendix P - Email from Williams to Hall, Ausserer dated August 29, 2013.

¹⁸ Appendix Q -Email exchange between Warner and Hall between 5 pm and 6:20 pm on August 29, 2013.

¹⁹ Appendix R - Email exchange between Williams and Warner on September 3, 2013.

²⁰ Appendix H - Schedule of Attorney Visits

²¹ Appendix S - Transcript of Plea Hearing on 9/9/13 6-7.

1 murder failed to acknowledge specifically that he had discussed the elements of the offense
2 with his counsel. Appendix B, paragraph 4[b] [note absence of initials].²²

3 Likewise, there was no colloquy or other documentation to establish that Mr. Musga
4 knew the substantive difference between an element of the crime versus an aggravating factor.
5 *Passim.*

6 Mr. Musga did *not* stipulate to the existence of any aggravating circumstances for
7 purposes of the sentencing hearing. *Passim.* There was no discussion of aggravating
8 circumstances at the plea hearing. *Passim.* Thus, there is nothing to establish that Mr. Musga
9 was aware of the effect of including aggravating factors in his plea. *Passim.*

10 Mr. Musga did not waive his right to have a jury decide whether the State had proven
11 the existence of aggravating factors. *Passim.* In fact, that was never discussed at all at either the
12 plea or the sentencing. *Passim.*

13 Subsequent to the entry of the plea, the State asked that sentencing be set out until mid-
14 November “because defense would like to present some mitigation material as this is an open
15 recommendation, and the State will be seeking an exceptional sentence.” Appendix D, p. 10.

16 Defense counsel informed the court that “at some point, we are going to present an
17 order, hopefully, agreed to allow an expert into the jail to evaluate Mr. Musga.”²³

18 Ten days after entry of the plea, Dr. Ken Muscatel met with Mr. Musga in the Pierce
19 County Jail.²⁴ Mr. Musga had not been prepared for this interview, did not know what it was
20 for, and made statements that contradicted statements that he had made at the plea hearing 10
21 days prior.

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24 ²² Appendix B.

25 ²³ Defense counsel’s comment was not necessary. No order was required. No order was ever obtained. An
evaluation was done. The State repeatedly asked the defense for a copy of it.

²⁴ Appendix dd - Defense Presentencing Documents – Report of Dr. Ken Muscatel, page 1.

1 After the plea was entered, the State received the report from the Washington State
2 Crime Laboratory.²⁵ This report was potentially exculpatory for Ms. Musga because his DNA
3 was not found on any of the physical evidence.²⁶ No semen/spermatozoa were found on the
4 items. *Id.* Defense counsel later emailed the State that the results were being evaluated by a
5 defense expert²⁷ – however there is nothing to corroborate evaluation by an independent expert
6 in defense counsel’s file²⁸.

7 Subsequent to the plea, Mr. Musga was interviewed by Presentence report writer Joe
8 Sofia of the Department of Corrections on November 8, 2013. Warner could not attend because
9 of a Continuing Legal Education [CLE] course and Hall agreed to attend the interview. Hall
10 had never attended a presentencing interview [PSI] before and he asked for “pointers.”²⁹

11 The presentence report³⁰ was filed with the court on November 19, 2014, two days
12 before the sentencing hearing. Defense counsel had never reviewed the presentence with Mr.
13 Musga prior to sentencing and he had never seen it prior to the sentencing hearing.³¹

14 On November 21, 2013, the court held a sentencing hearing. The State presented a
15 powerpoint because “it is a contested sentenceand it’s the most effective and persuasive
16 means the State has to persuade this court that the State’s position is the right position.” RP
17 11/21/13 5.

18 Prior to that presentation, the court asked whether anybody had “any exception,
19 correction, modification” to the presentence report [PSI]? RP 11/21/13 7. Defense counsel
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22 ²⁵ Appendix T - Report from Washington State Crime Laboratory.

23 ²⁶ Appendix T – pages 1, 2, 3.

24 ²⁷ Appendix. U - Email from Attorney Richard Warner to Deputy Prosecutor Angelica Williams on November 5,
2013.

25 ²⁸ Appendix V - Declaration of Patrick Pitt, page 4.

²⁹ Appendix W - Email exchange between Warner and Hall on November 1, 2013.

³⁰ Presentence Report – DOC – page 1.

³¹ Appendix G - Declaration of Jake Musga – pages 9-10.

1 merely pointed out a typographical error but did not object to any content. *Id.* This possibly
2 may be attributed to failure to review the report with Mr. Musga.³²

3 The State's powerpoint contained photos from injuries inflicted by CC's mother prior to
4 the incident in question [slides 7, 8, 9³³,³⁴], focused on the State's interpretation of Mr. Musga's
5 substance abuse issues, his alleged lack of remorse, the physical injuries sustained by CC, and
6 the detective's opinion regarding his failure to acknowledge responsibility.³⁵

7 Because the State had failed to provide the notice of exceptional sentence required by
8 the statement of defendant on plea of guilty, the State had not given notice of the aggravating
9 factors upon which it intended to seek an exceptional sentence. The State's sentencing
10 presentation to the court thus violated the plea agreement. Trial counsel should have objected,
11 but failed to do so.³⁶

12 Before sentencing Mr. Musga to an exceptional sentence, the court found that he had
13 "stipulated to those acts which constitute exceptional circumstances and aggravating
14 circumstances, which allows this court to make a sentence beyond what is a standard range
15 sentence for these offenses." RP 11/21/13 51. Of course, Mr. Musga had never known he was
16 doing anything other pleading to the elements of the offense as the court had affirmed at the
17 plea hearing. RP 9/9/13 6-7. At no time during the plea hearing had anyone informed Mr.
18 Musga that he had stipulated to anything that would permit the court to impose a higher
19 sentence. *Passim.*

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24 ³² Appendix G - Declaration of Jake Musga, pages 9-10.

³³ Appendix G, Declaration of Janet Musga, page 3.

³⁴ Appendix G, Declaration of Jake Musga, page 4.

³⁵ Appendix X, State's PowerPoint sentencing presentation.

³⁶ Appendix ee - Transcript of Sentencing Hearing – pages 4-47.

1 Warner and Hall submitted a document entitled “defense presentencing documents.”³⁷
2 This document contained a recommendation for mid-range standard sentences and offered as a
3 “factual basis for defense recommendations” the following: “The Court has had the opportunity
4 to review both parties supporting documentation as well as the Certification for Determination
5 of Probable Cause and their respective arguments.”³⁸ The defense provided no supporting
6 documentation except for two letters asking for leniency and the report of Dr. Muscatel. *Id.*
7 Defense counsel also apparently stipulated to the content of the Certification for Determination
8 of Probable Cause. *Id.*
9

10 The court the sentenced Mr. Musga to an exceptional sentence of 608 months on count
11 1, first degree murder, and 258 months to life on count 2, first degree child rape.

12 After imposing sentence, the court *failed* to advise Mr. Musga of his appellate rights as
13 required by court rule:

14 (b) Procedure at Time of Sentencing. The court shall, immediately after
15 sentencing, advise the defendant: (1) of the right to appeal the conviction; (2) of the
16 right to appeal a sentence outside the standard sentence range; (3) that unless a notice of
17 appeal is filed within 30 days after the entry of the judgment or order appealed from, the
18 right to appeal is irrevocably waived; (4) that the superior court clerk will, if requested
19 by the defendant appearing without counsel, supply a notice of appeal form and file it
20 upon completion by the defendant; (5) of the right, if unable to pay the costs thereof, to
have counsel appointed and portions of the trial record necessary for review of assigned
errors transcribed at public expense for an appeal; and (6) of the time limits on the right
to collateral attack imposed by RCW 10.73.090 and .100. These proceedings shall be
made a part of the record.

21 RP 11/21/13 56. Mr. Musga’s trial counsel likewise never advised him of his appellate rights³⁹.

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25 ³⁷ Appendix dd.

³⁸ Appendix ff - Presentence Investigation Report – Page 2.

³⁹ Appendix G - Declaration of Jake Musga page 11.

1 The court subsequently entered findings of fact and conclusions of law regarding
2 exceptional sentence.⁴⁰ Had Mr. Musga been advised of his right to file a direct appeal, he
3 would have assigned error to these and argued for relief therein.

4 Consequently, Mr. Musga filed no direct appeal.

5 This personal restraint petition is timely.

6 5. LAW AND ARGUMENT

7 A. Trial counsel's failure to provide effective representation actually and
8 substantially prejudiced Mr. Musga, thereby mandating relief in this collateral
9 attack.

10 To obtain relief on collateral review based on a constitutional error, the petitioner must
11 demonstrate by a preponderance of the evidence that he was actually and substantially
12 prejudiced by the error. *In re the Pers. Restraint Petition of Davis*, 152 Wn.2d 647, 671-72, 101
13 P.3d 1 [2004]. But "if a personal restraint petitioner makes a successful ineffective assistance of
14 counsel claim, he has necessarily met his burden to show actual and substantial prejudice." *In*
15 *re Crace*, 174 Wn.2d 835, 846-47, 280 P.3d 1102 [2012].

16 The right to counsel includes the right to effective assistance of counsel. *Strickland*, 466
17 U.S. at 686. In order to prevail on an ineffectiveness claim, a petitioner must prove that (1)
18 counsel's performance was deficient and (2) the defendant was prejudiced by the deficient
19 performance. *Id.* at 687.

20 The first requirement involves showing that counsel's performance fell below "an
21 objective standard of reasonableness." *Id.* at 688. Reasonable tactical choices do not constitute
22 deficient performance. *Id.* at 689. Reviewing courts make "every effort to eliminate the
23 distorting effects of hindsight." *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 888, 828 P.2d
24 1086 (1992).

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⁴⁰ Linx Case History
PERSONAL RESTRAINT PETITION

1 For the second requirement, prejudice is defined as “a reasonable probability that, but for
2 counsel's unprofessional errors, the result of the proceeding would have been different.”
3 *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine
4 confidence in the outcome.” *Id.*

5 In this case, Mr. Musga received the functional equivalent of no counsel at all. His counsel
6 failed to show case discovery with him, conducted no investigation into the case and thus failed
7 to test the State' evidence and follow potential leads that were known to them. Their failure to
8 conduct any investigation prevented them from fulfilling constitutional requirements to ensure
9 that Mr. Musga entered a plea that comported with requirements that it be knowing, intelligent
10 and voluntary. Trial counsel failed to explain to him the difference between elements of a crime
11 and aggravating factors/circumstances. This lack of advice exposed Mr. Musga to an
12 exceptional that he believed was no possible given the way defense filled out and advised him
13 on the guilty plea forms. Trial counsel failed to prepare him for the mandatory presentence
14 interview, subjected him to a psychological examination without advance notice or explanation
15 of purpose and then unnecessarily shared this unfavorable with the State and the court, and
16 failed to give Mr. Musga the opportunity to read the presentence report prior to the sentencing
17 hearing. When the court failed to comply with CrR 7.2(b) and advise Mr. Musga of his
18 constitutional right to direct appeal, defense counsel did nothing.

19 Based on the arguments set forth below, Mr. Musga has satisfied the two prong standard
20 set forth in *Strickland v. Washington*, 466 U.S. 668, 687-688. 694. 104 S. Ct. 2052, 80 L.Ed.2d
21 674 (1984) This is so because if a personal restraint petitioner makes a successful ineffective
22 assistance of counsel claim, he has necessarily met his burden to show actual and substantial
23 prejudice.” *In re Crace*, 174 Wn.2d 835, 846-47, 280 P.3d 1102 [2012].

24 B. Trial counsel's ineffectiveness caused Mr. Musga to enter a fatally flawed guilty
25 plea.

1 Effective assistance of counsel includes assisting the defendant in making an informed
2 decision as to whether to plead guilty or to proceed to trial. *State v. S.M.*, 100 Wn.App. 401,
3 413, 99 P.2d 1111 (2000). Due process guarantees in the federal and state constitutions require
4 that a guilty plea be made intelligently and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242-
5 43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Personal Restraint of Montoya*, 109 Wn.2d
6 270, 277, 744 P.2d 340 (1987); U.S. CONST. amends. V, XIV; CONST. art. I, § 3.

7 During plea bargaining, counsel has a duty to assist the defendant "actually and
8 substantially" in determining whether to plead guilty. *State Osborne*, 102 Wn.2d 87, 99, 684
9 P.2d 683 (1984); *State v. Stowe*, 71 Wn. App. 182, 186, 858 P.2d 267 (1993). It is counsel's
10 responsibility to aid the defendant in evaluating the evidence against him and in discussing the
11 possible direct consequences of a guilty plea. *State v. Holley*, 75 Wn. App. 191, 197, 876 P.2d
12 973 (1994).

13 In the context of a guilty plea, trial counsel cannot assist the defendant in evaluating the
14 evidence against him and discussing the possible direct consequences of a plea without first
15 conducting an investigation into the case. The degree and extent of investigation required will
16 vary depending upon the issues and facts of each case, but the courts have held that at the very
17 least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a
18 conviction if the case proceeds to trial so that the defendant can make a meaningful decision as
19 to whether or not to plead guilty. *State v. ANJ*, 168 Wn.2d 91, 109, 225 P.3d 956 (2010).

20 Trial counsel's many duties to her client include properly evaluating the merits of a plea
21 offer. Evaluation of a plea offer requires an evaluation of the State's evidence. See *State v. Bao*
22 *Sheng Zhao*, 157 Wn.2d 188, 205, 137 P.3d 835 (2006) (Sanders, J., concurring). Failure to
23 investigate, when coupled with other defects, can amount to ineffective assistance of
24 counsel. *In re Brett*, 142 Wn.2d 868, 882-883, 879-80, 16 P.3d 601 (2001).

1 The duty to investigate is never excused even where a defendant appears to be guilty,
2 for example, where the defendant reportedly confessed. False confessions, mistaken eyewitness
3 identifications, and the fallibility of child testimony are well documented. See Richard A. Leo
4 et al., *Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-*
5 *First Century*, 2006 Wis. L. Rev. 479, 480-85 (2006) (discussing the false confessions by
6 juveniles to the Central Park jogger case); Steven A. Drizin & Richard A. Leo, *The Problem of*
7 *False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 904 (2004); *Bernal v. People*,
8 44 P.3d 184, 190 (Colo. 2002) (discussing fallibility of eyewitness testimony). A criminal
9 defense lawyer owes a duty to defend even a guilty client. RPC 3.1; WDA, *supra*, at 9; ABA,
10 Standards for Criminal Justice: Prosecution Function and Defense Function defense function
11 std. 4-4.1(a) (3d ed. 1993). Counsel has a duty to assist a defendant in evaluating a plea
12 offer. RPC 1.1 (“A lawyer shall provide competent representation to a client. Competent
13 representation requires ... thoroughness and preparation reasonably necessary for the
14 representation.”); RPC 1.2(a) (“In a criminal case, the lawyer shall abide by the client's
15 decision, *after consultation with the lawyer*, as to a plea.” (emphasis added)); *State v. Osborne*,
16 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633
17 P.2d 901 (1981)).

18 The American Bar Association [ABA] Standards on Criminal Justice require such
19 investigation. Standard Std. 4-4.1(a) similarly provides:

20 Defense counsel should conduct a prompt investigation of the circumstances of the case
21 and explore all avenues leading to facts relevant to the merits of the case and the penalty
22 in the event of conviction. The investigation should include efforts to secure
23 information in the possession of the prosecution and law enforcement authorities. The
24 duty to investigate exists regardless of the accused's admissions or statements to defense
25 counsel of facts constituting guilt or the accused's stated desire to plead guilty.

26 In Mr. Musga’s case, defense counsel had substantial investigation to accomplish prior
27 to discussing the advisability of any plea offers. Todd Maybrown, an experienced criminal

1 defense attorney provided an expert opinion regarding the effectiveness of trial counsel in this
2 case⁴¹. Maybrow reviewed many documents in his case review, including, inter alia, all of the
3 police reports, portions of the transcripts, defense presentencing documents⁴².

4 Based on his review, Maybrow opined that “it was imperative” for Mr. Musga’s
5 attorneys to conduct a thorough investigation of all factual issues relating to these charges. In
6 particular, the discovery materials suggest that CC may have suffered some [perhaps many]
7 injuries prior to March 29, 2013. It was critical for the attorneys to evaluate each and every
8 injury that CC suffered in an effort to determine whether CC could have been injured by a
9 person or persons other than Musga. The defense must carefully analyze any opinion testimony
10 that might be rendered by the State’s experts in the case. To do so, and at a minimum, trial
11 counsel would need to consult with a medical expert who could evaluate and critically assess
12 all medical reports and the autopsy report pertaining to CC and his case. Further, because
13 defense counsel knew that CC likely was injured while in the care of his mother and
14 grandmother, defense counsel were required to interview these individuals as well as other
15 members of the extended family regarding CC’s prior care and bruising.⁴³

16 In addition, Patrick Pitt⁴⁴, a retired British Senior Police Investigator, Scotland Yard
17 officer, and Interpol officer, and now private investigator, was employed as a police expert in
18 this case. Mr. Pitt⁴⁵ reviewed copies of notes, letters, emails related to interviews and/or
19 conversations with Jake Musga, Janet, Musga, and Mike Musga; copies of all reports and
20 written advice tendered in this case, whether electronic or otherwise; all correspondence and
21 notes regarding any possible consultations with any experts or third parties; copies of
22 correspondence to and from the Pierce County Prosecuting Attorney’s Office [PCPAO]; copies

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24 ⁴¹ Appendix bb - Declaration of Todd Maybrow

⁴² Appendix bb - Declaration of Todd Maybrow – page 4.

⁴³ Appendix G - Declaration of Jake Musga – page 3

⁴⁴ Appendix Y - Curriculum Vitae of Patrick Pitt

⁴⁵ Appendix V - Declaration of Expert Patrick Pitt

1 of all notes of conversations and meetings with PCPAO; and correspondence with any
2 Washington state agency, whether in written or electronic form.

3 Mr. Pitt, with the assistance of petitioner and his counsel, arranged to pick up the files
4 and correspondence of Warner and Hall. Hall provided the discovery file. However, neither
5 attorney provided any notes of client interviews, notes of interview with the prosecutors, notes
6 of any witness interviews carried out, and/or notes of case discussions between the attorneys or
7 record or other parties.

8 Hall sent an email on November 4, 2014, in which he averred that he had been in a two
9 week trial and had not yet had time to begin assembling materials that had been requested
10 several weeks earlier.⁴⁶ He promised to work on the matter expeditiously. He did not. No
11 materials were received as on November 20, 2014.

12 In his report as an expert in investigations, Pitt identified key witnesses that should have
13 been interviewed, including first responders, the medical examiner, key police officers, on-
14 scene forensic personnel, interviewing officers, scene residents, Ricky Saldiva [resident in
15 lobby who called 911], medical personnel, CC's mother and members of her extended family.⁴⁷
16 The report contains further steps in an investigative plan sufficient to permit trial counsel to be
17 familiar with the State's evidence so as to meaningfully advise the client when assessing any
18 plea offer from the State.

19 Of particular significance, the medical examiner's report identify numerous older
20 injuries including but not limited to "old yellow-orange contusions on the right and left sides of
21 the face and temples..."; contusions on the abdomen that range in color [thus suggesting
22 different dates of infliction]; "old blunt head injury, small subdural neomembrane; old
23 abdominal injury, mesenteric granulation and fibrosis;" "retroperitoneal granulation and
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25 ⁴⁶ Appendix cc - Email from Keith Hall to Barbara Corey dated 11/4/14.

⁴⁷ Appendix V - Pitt Declaration, pages 5-6.

1 scarring consistent with old blunt abdominal trauma.”⁴⁸ These injuries were especially
2 important to explore because Mr. Musga has always contended that both Laura Colley and her
3 mother often inflicted serious physical abuse on CC. Laura Colley was with CC off and on
4 throughout the entire charged event.⁴⁹

5 Despite their many investigative duties to fulfill in this case, defense counsel did
6 virtually nothing to investigate this case. Although defense counsel had 814 pages⁵⁰ of
7 discovery prior to the date of the plea hearing, they never reviewed more than more than few
8 pages of discovery with Mr. Musga⁵¹. Further, they had not interviewed *any* witnesses in the
9 case. They had been provided names of individuals who had seen CC with bruises on many
10 occasions prior to the instant offense. In addition, on some of these occasions CC had been in
11 the care of his grandmother as well as his mother. On one such occasion, CC’s grandmother
12 had commented that they could not take him to the doctor because the doctor would take CC
13 away from them due to his many bruises.⁵² In addition, defense counsel had been given
14 information that the child’s mother had been home off and on the night and early morning
15 when the child died⁵³. Defense counsel did nothing to investigate her alibi. Moreover, at the tie
16 of the guilty plea, defense counsel did not even have the DNA results from the State’s tests at
17 the Washington State Crime Lab.⁵⁴ These lab reports, belatedly received, affirmed the absence
18 of semen from the rectal swabs. These results should have been known prior to any decision to
19 enter a plea.

20 Mr. Musga then found himself in the position where he had 7 days in which to decide to
21 plead guilty or face aggravated murder charges and a possible death penalty. He had not seen
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23 ⁴⁸ Appendix gg - Excerpts from Medical Examiner’s Report on CC -

24 ⁴⁹ Appendix G - Declaration of Jake Musga – page 3

25 ⁵⁰ Appendix Z - Discovery Distribution Receipt – LINX – August 29, 2013.

⁵¹ Appendix G - Declaration of Jake Musga – page 2.

⁵² Appendix G - Declaration of Jake Musga – page 3.

⁵³ Appendix G - Declaration of Jake Musga – page 4.

⁵⁴ Appendix T - Lab report from Washington State Crime Lab.

1 the discovery in his case. He had made suggestions for his attorneys to contact witnesses whose
2 testimony would be helpful to him. Nothing had been done. He decided to take the plea offer of
3 plead as charged to an open recommendation – exceptional sentence. He did so not knowing
4 that he had “stipulated” to any aggravating circumstances and also having been misled by the
5 “check-marks” on paragraph 6[h] on each plea form to believe that the State would have a
6 difficult time proceeding on any exceptional sentence on either charge.

7 Mr. Musga wanted to go to trial and planned to go trial. However, when he became
8 disheartened and hopeless when his attorneys did nothing on his case. In the 8 months between
9 arraignment and sentencing, Mr. Musga saw his attorneys for fewer than 29 hours.⁵⁵ They did
10 not show him his discovery, told him that he would face far more serious charges if he did not
11 accept the state’s offer within 7 days, and they did not seem to have any strategy or plan to
12 defend him. Although he had given names of potential witnesses to his attorneys, they had not
13 interviewed these witnesses and in fact had said they would not interview some of them.

14 Defense counsel compounded the lack of investigation by telling the 19 year old that the
15 State would file aggravated murder with the possible death penalty if he did not plead guilty in
16 seven days.⁵⁶ This information placed substantial pressure on the 19 year old young man.
17 Defense counsel should have been able to evaluate this statement by the prosecutor, assuming
18 arguendo that it was even true, into context by discussing the defense investigation in the case
19 and also by discussing the relevant law. Importantly, premeditation constitutes an essential
20 element of the crime of aggravated first-degree murder. *State v. Lane*, 112 Wn.2d 464, 771
21 P.2d 1150 (Wash. 1989). Defense counsel should have provided an opinion to Mr. Musga
22 regarding the State’s ability to prove premeditated murder. Since in light of the evidence in
23

24 ⁵⁵ Appendix V - Declaration of Pat Pitt, page 7. NOTE: The times documented here include check-in time at the
25 jail reception window and then walking time to the interview room in the appropriate unit in the jail. This process
may take as long as 15 minutes.

⁵⁶ Appendices G - Declaration of Jake Musga – page 2-3;
PERSONAL RESTRAINT PETITION

1 the case proof of that element appears weak at best, Mr. Musga should have been so advised.
2 There doubtless are other proof issues in the case that a competent investigation would have
3 uncovered. However, having done nothing, defense counsel could not give any meaningful
4 advise to Mr. Musga. Their advise was limited to “plead guilty now or it will only get worse.”

5 He entered his guilty plea because he believed his attorneys were incompetent and that
6 it was his only choice at that time. He wanted to go to trial.

7 C. Mr. Musga Should Be Allowed To Withdraw His Guilty Plea Where He Was
8 Misadvised Regarding The Circumstances Under Which The State Could Seek
9 And The Court Could Impose An Expcetional Sentence Under Each Charge,
10 Neither Of Which Applied To That Charge. Mr. Musga Thus Pleaded Guilty
11 Believing That He Could Not Receive Exceptional Sentence Above The Standard
12 Ranges.

13 A guilty plea is involuntary when a defendant is not informed of all direct consequences
14 of pleading guilty. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 300, 88 P.3d 390 (2004). A
15 direct consequence is one having a definite, immediate, and largely automatic effect on the
16 range of punishment. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). The court must
17 examine the “totality of circumstances” to determine whether petitioner understood the nature
18 of the charge, the elements of the crime, the sentencing options [as opposed to a particular
19 sentence.]. *In re Pers. Restraint of Hews*, 108 Wn.2d 579, 594, 597, 741 P.2d 983 (1987); *In re*
20 *Pers. Restraint of Mendoza Montoya*, 109 Wn.2d 270, 277, 744 P.2d 340 (1987).

21 When we the court considers the voluntariness of a plea, an error causes harm if it
22 undermines the voluntariness of the *decision* to plead guilty—the process which is supposed to
23 ensure a knowing, intelligent, and voluntary decision, not a particular sentence. This is true
24 under the court’s seminal decisions on this topic. (*Hews II*) (court must examine ““totality of
25 circumstances”” to determine whether petitioner understood nature of charge, elements, and
whether Hews “had discussed with his attorney alternative courses of action”); . This is true
under the United States Supreme Court's seminal decisions on this topic. *Boykin v. Alabama*,

1 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). This is true under United States
2 Supreme Court decisions on the related topic of what constitutes ineffective assistance of
3 counsel in the plea-advice context. *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376, 1390-91,
4 182 L. Ed. 2d 398 (2012) (distinguishing inquiry applicable to ineffective assistance claim
5 arising in the plea context from requirement that plea itself be “knowing and voluntary”;
6 treating prejudice in the former context as having adverse effect on cost-benefit analysis
7 involved in deciding whether to plead guilty); *Padilla v. Kentucky*, 559 U.S. 356, 369, 130 S.
8 Ct. 1473, 176 L. Ed. 2d 284 (2010) (defense counsel must advise defendant pleading guilty of
9 the consequence of deportation to provide effective assistance).

10 D. Mr. Musga must be allowed to withdraw his fatally flawed guilty plea;
11 alternatively, the matter must be remanded for sentencing within the standard
12 range.

13 The trial court “shall not accept a plea of guilty, without first determining that it is made
14 voluntarily, competently and with an understanding of the nature of the charge and the
15 consequences of the plea.” CrR 4.2(d).

16 In this case, Mr. Musga was never informed either by the court or counsel that he was
17 pleading guilty to aggravators or “stipulating” to factors that would increase his sentence.
18 These factors were set forth in the charging documents with the elements. When the court took
19 his plea, the court inquired whether Mr. Musga understood the elements⁵⁷. The court did not
20 ask Mr. Musga whether he understood that by pleading guilty to aggravating circumstances, he
21 was making it easy for the State to obtain an exceptional sentence.

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⁵⁷ Appendix – plea transcript, page 7.
PERSONAL RESTRAINT PETITION

1 Mr. Musga did not know that he had “stipulated” to any aggravating factors that could
2 be used by the court to impose an exceptional in his cases⁵⁸. This “stipulation” is not
3 mentioned on the record prior to the court’s oral ruling imposing sentencing.⁵⁹

4 RCW 9.94A.535 sets forth an exclusive list of aggravating factors that may be alleged
5 as the basis for an exceptional sentence. In the charging language for count I, first degree
6 murder, the State alleged, *inter alia*, “This aggravator is not an exception to RCW
7 9.94A.530(2) , and/or pursuant to RCW 9.94A.535, the defendant’s conduct during the
8 commission of this offense RESULTED IN MULTIPLE INJURIES OR MORE SEVERE
9 INJURIES THAT [SIC] TYPICALLY ASSOCIATED WITH THE COMMISSION OF THIS
10 OFFENSE.”

11 Simply put, the State is not allowed to invent aggravating factors, charge them, and then
12 adduce evidence to support them at a sentencing hearing.

13 As will be argued herein, the State used this invented aggravating factor to place in its
14 powerpoint presentation graphic, objectionable, and highly prejudicial content that would not
15 have otherwise been put before the sentencing court.

16 (bb) *In his plea to Count I, first degree murder, Mr. Musga was misadvised*
17 *regarding the means for imposition of an exceptional sentence and his sentence*
was imposed in violation of that advise.

18 In the statement of defendant on plea of guilty⁶⁰, paragraph 6(h) informs the defendant
19 that the judge does not have to follow anyone’s recommendation as to sentence. The paragraph
20 then states: “I understand the following regarding exceptional sentences: **with check marks by**
21 **the applicable sections** (i) *The judge may impose an exceptional sentence below the standard*
22 *range if the judge finds mitigating circumstances supporting an exceptional sentence; and (iii)*
23 *The judge may also impose an exceptional sentence above the standard range if the State and I*

24
25 ⁵⁸ Appendix G - Declaration of Jake Musga – page 7.

⁵⁹ Appendix – Sentencing transcript – page 51.

⁶⁰ Appendix B – Statement of Defendant on Plea of Guilty.

1 stipulate that justice is best served by the imposition of an exceptional sentence and the judge
2 agrees that an exceptional sentence is consistent with and in furtherance of the interests of
3 justice and the purposes of the Sentencing Reform Act.”

4 Mr. Musga signed this completed plea form with the appropriate check marks all
5 through the form for all relevant paragraphs. *Id.* Likewise, his attorneys, the deputy
6 prosecutors, and the court all signed the same document. *Id.*

7 At sentencing for this count, the trial court found only that “the defense has stipulated to
8 those acts which constitute exceptional circumstances and aggravating circumstances, which
9 allows this court to make a sentence beyond which is a standard range sentence for these
10 offenses.⁶¹

11 Having entered his plea to first degree murder, Mr. Musga was confident that the only
12 exceptional sentence the court could impose on that charge would be a downward sentence.

13 (cc) *In his plea to Count II, first degree child rape, Mr. Musga was misadvised*
14 *regarding the means for imposition of an exceptional sentence.*

15 In the statement of defendant on plea of guilty⁶², paragraph 6(h) informs the defendant
16 that the judge does not have to follow anyone’s recommendation as to sentence. The paragraph
17 then states: “I understand the following regarding exceptional sentences: **with check marks by**
18 **the applicable sections** (i) *The judge may impose an exceptional sentence below the standard*
19 *range if the judge finds mitigating circumstances supporting an exceptional sentence; and (iv)*
20 *The judge may also impose an exceptional sentence above the standard range if the State has*
21 *given notice that it will seek an exceptional sentence, the notice states aggravating*
22 *circumstances upon which the sentence will be based, and facts supporting an exceptional*
23 *sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a*
24 *jury, or by stipulated facts.” However, this finding by the court is insufficient to satisfy the*

25 ⁶¹ Appendix ee - Sentencing transcript p. 51.

⁶² Appendix B – Statement of Defendant on Plea of Guilty.
PERSONAL RESTRAINT PETITION

1 paragraph 6[h](iii), upon which the court relied in count one. For the court to impose such an
2 exceptional sentence, the defendant was required to stipulate “*that justice is best served by*
3 *imposition of an exceptional sentence.*” Mr. Musga made no such stipulation.

4 Either his attorneys erred by failing to advise him of the alternate means by which the
5 trial court can impose an exceptional sentence, which makes Mr. Musga’s plea involuntary and
6 hence constitutionally fatally flawed.

7 Or else the court imposed a sentence that relied on a stipulation that had not been given
8 in which case the court exceeded its statutory authority to impose the sentence. In that case, this
9 matter be remanded for resentencing under paragraph [6](h)(i), consistent with the plea, or
10 within the standard range.

11 Mr. Musga signed this completed plea form with the appropriate check- marks all
12 through the form for all relevant paragraphs. *Id.* Likewise, his attorneys, the deputy
13 prosecutors, and the court all signed the same document. *Id.*

14 Similarly, having entered his plea to first child rape, Mr. Musga was confident that the
15 only exceptional sentence the court could impose on that charge would be a downward
16 sentence under paragraphs [6](h)(i), (iv) . The court had accepted his guilty plea which had not
17 stipulated to facts supporting an exceptional sentence. It is clear from the record at time of plea
18 that the court simply asked Mr. Musga if he understood the elements of the crime.⁶³ Further,
19 there is nothing on the record that Mr. Musga waived a jury at sentencing. *Passim.* Paragraph
20 [6](h)(iv) requires that the “aggravating circumstances upon which the requested sentence will
21 be based, and the facts supporting an exceptional sentence are proven beyond a reasonable
22 doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.” In this case, as
23 argued above, there is no evidence to support the judge’s conclusion that Mr. Musga had
24 stipulated to any facts. Further, even assuming arguendo that he so stipulated, that is no inquiry

25 ⁶³ Appendix S - Plea transcript – page 6-7.
PERSONAL RESTRAINT PETITION

1 regarding any decision to waive a jury's decision beyond a reasonable doubt that the State had
2 proved the facts supporting an exceptional sentence beyond a reasonable doubt. *Passim*.

3 Either his attorneys erred by failing to advise him of the alternate means by which the
4 trial court can impose an exceptional sentence, which makes Mr. Musga's plea involuntary and
5 hence constitutionally fatally flawed.

6 Or else the court imposed a sentence that relied on a stipulation that had not been given
7 in which case the court exceeded its statutory authority to impose the sentence. In that case, this
8 matter be remanded for resentencing under paragraph [6](h)(i), consistent with the plea, or
9 within the standard range.

10 In either situation, Mr. Musga is entitled to relief.

11 E. Mr. Musga Is Entitled To Reinstatement Of His Direct Appeal

12 Washington's Const. art. 1, § 22 (amendment 10) grants not a mere privilege but a "right
13 to appeal in all cases". *State v. Schoel*, 54 Wn.2d 388, 341 P.2d 481 (1959). There exists no
14 presumption in favor of waiver of constitutional rights. *State v. Emmett*, 77 Wn.2d 520, 463
15 P.2d 609 (1970). This principle extends to the constitutional right of appeal.

16 *The State* carries the burden of demonstrating that a convicted defendant has made a
17 voluntary, knowing, and intelligent waiver of the right to appeal.

18 CrR 7.1[b] requires the trial court to advise the defendant of his appellate rights at the
19 time of sentencing. Strict compliance with the requirement of reading those rights is mandated
20 by the word "shall."
21

1 In this case, the record is clear that the trial court simply failed to advise Mr. Musga of
2 his right to appeal the exceptional sentence. RP 11/21/13 48-56. There is no written advisement
3 of appellate rights in the Superior Court file.⁶⁴

4 Mr. Musga was entitled by the Washington Constitution and RCW 9.94A.535+++ to
5 appeal from an exceptional. However, without advisement of that right by the trial court, he did
6 not know that and did not exercise his right.

7 His was not a voluntary, knowing, and intelligent waiver of the right to appeal.
8
9 Waiver is the intentional relinquishment or abandonment of a known right or
10 privilege. *Johnson v. Zerbst*, 304 U.S. 458, 82 L. Ed. 1461, 58 S. Ct. 1019, 146 A.L.R. 357
11 (1938); *State v. Schoel, supra*. The simple reading of CrR 7.1(b) to a defendant may well be
12 insufficient in itself to give rise to a conclusion of waiver. *Compare State v. Taylor*, 83 Wn.2d
13 594, 521 P.2d 699 (1974), and CrR 4.2 (guilty pleas). However, this is not a case where the
14 court needs to determine whether the defendant's waiver of the rights read to him was
15 sufficient. This is so because the court simply failed to read the appellate rights to Mr. Musga.
16 He thus did not relinquish a known right. He rather did not act on an unknown right.

17 In *State v. Sweet*, 90 Wn.2d 282; 290-91, 581 P.2d 579 (1978), the court reinstated the
18 defendant's direct appeal where he had not been advised of his appellate rights consistent with
19 CrR 7.1[b] at time of sentencing.

20
21 In this case, the court can do no less. Mr. Musga was not told he could appeal and that
22 he had 30 days within which to file his notice of direct appeal. His direct appeal should be
23 reinstated and he should be a 30 day period within which to file a notice of direct appeal.

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⁶⁴ Appendix hh - Pierce County Superior Court Case 13-1-01369-1, *State v. Jake Musga – LINX case history*.
PERSONAL RESTRAINT PETITION

APPENDIX A

April 03 2013 11:28 AM

KEVIN STOCK
COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-01369-1

vs.

JAKE JOSEPH MUSGA,

INFORMATION

Defendant.

DOB: 3/5/1994

SEX : MALE

RACE: WHITE

PCN#: 540948658

SID#: 26750183

DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JAKE JOSEPH MUSGA of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That JAKE JOSEPH MUSGA, in the State of Washington, on or about the 30th day of March, 2013, did unlawfully and feloniously, while committing or attempting to commit the crime of Rape of a Child in the First Degree, and in the course of or in furtherance of said crime or in immediate flight therefrom, the defendant caused the death of CC (DOB 3/5/11), a human being, not a participant in such crime, on or about the 30th day of March, 2013, contrary to RCW 9A.32.030(1)(c), and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, and/or pursuant to RCW 9.94A.535(3)(a), the defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim, and/or pursuant to RCW 9.94A.535(3)(y), the victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2), and/or pursuant to RCW 9.94A.535, the defendant's conduct during the commission of this offense RESULTED IN MULTIPLE INJURIES OR MORE SEVERE INJURIES THAT TYPICALLY ASSOCIATED WITH THE COMMISSION OF THIS OFFENSE, and/or pursuant to RCW 9.94A.535(2)(y), the victim's injuries substantially exceed the

INFORMATION- 1

1 level of bodily harm necessary to satisfy the elements of the offense, and against the peace and dignity of
2 the State of Washington.

COUNT II

3 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse JAKE JOSEPH MUSGA of the crime of RAPE OF A
5 CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the
6 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
proof of one charge from proof of the others, committed as follows:

7 That JAKE JOSEPH MUSGA, in the State of Washington, during the period between the 29th
8 day of March, 2013 and the 30th day of March, 2013, did unlawfully and feloniously being at least 24
9 months older than CC (DOB 3/5/11), engage in sexual intercourse with CC, who is less than 12 years old
10 and not married to the defendant and not in a state registered domestic partnership with the defendant,
11 contrary to RCW 9A.44.073, and the crime was aggravated by the following circumstances: pursuant to
12 RCW 9.94A.535(3)(a), the defendant's conduct during the commission of the current offense manifested
13 deliberate cruelty to the victim, and/or pursuant to RCW 9.94A.535(3)(b), the defendant knew or should
have known that the victim of the current offense was particularly vulnerable or incapable of resistance,
and against the peace and dignity of the State of Washington.

14 DATED this 3rd day of April, 2013.

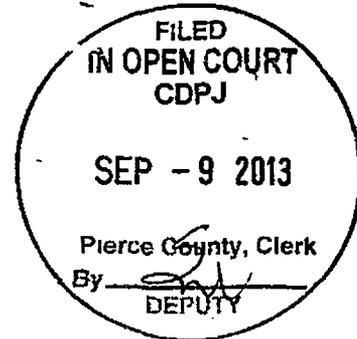
15 TACOMA POLICE DEPARTMENT
WA02703

MARK LINDQUIST
Pierce County Prosecuting Attorney

16
17 pks

By: /s/ PHILIP K. SORENSEN
PHILIP K. SORENSEN
Deputy Prosecuting Attorney
WSB#: 16441

APPENDIX B



**Superior Court of Washington
For Pierce County**

No. 13-1-01369-1

State of Washington
Plaintiff
vs.
JAKE J. MUSGA
Defendant

**Statement of Defendant on Plea of
Guilty to Non-Sex Offense
(STDFG)**

1. My true name is: JAKE JOSEPH MUSGA
2. My age is: 19
3. The last level of education I completed was H.S.
4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's names are: KEITH HALL AND RICHARD WARREN

(b) I am charged with the crime(s) of MURDER 1st (COUNT 1) as set out in the Original Information, dated, 4/3/13, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer JM
(Defendant's initials)

The elements of [] this crime [] these crimes are as set out in the _____ Information, dated _____ a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer _____
(Defendant's initials)

_____ Additional counts are addressed in Attachment "B"

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- ✓ (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- ✓ (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- ✓ (c) The right at trial to hear and question the witnesses who testify against me;
- ✓ (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- ✓ (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- ✓ (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000 For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
✓ 1	2	261 - 347 mos.	N/A	36 mos.	LIFE AND/OR \$50,000.
2					
3					

*Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, RCW 9 94A 533, (D) Other deadly weapon, RCW 9.94A 533, (V) VUCSA in protected zone, See RCW 69.50.435, RCW 9 94A 6533 (6), (VH) Veh Hom, see RCW 46 61.520, (JP) Juvenile present, See RCW 9 94A.605, (CSG) Criminal street gang involving minor, RCW 9.94A.533, (AE) Endangerment while attempting to elude. RCW 9 94A 533

- ✓ (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- ✓ (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the

offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- ✓ (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- ✓ (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9 94A 728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9 94A 030(45)	36 months
Violent Offenses as defined by RCW 9.94A 030(54)	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69 50 or 69 52 RCW (not sentenced under RCW 9 94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

(g) The prosecuting attorney will make the following recommendation to the judge: _____

Open recommendation - State seeking exceptional

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

✓ (h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

✓ (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence

(ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine

✓ (iii) The judge may also impose an exceptional sentence above the standard range if

the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act

(iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

✓ I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a hearing, either the State or I can appeal the sentence.

✓ (i) **If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.**

✓ (j) **I understand that I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.**

✓ (k) **I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A 04.079, 29A.08.520.**

(l) **Government assistance may be suspended during any period of confinement.**

(m) **I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee**

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out The defendant and the judge shall initial all paragraphs that DO APPLY.

_____ (n) **This offense is a most serious offense or "strike" as defined by RCW 9.94A 030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole**

JM (o) **The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9 94A 030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training**

JM (p) The judge may sentence me under the **Parenting Sentencing Alternative** if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the **Parenting Sentencing Alternative**, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.

JM (q) **If this crime involves kidnapping involving a minor**, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.

JM (r) **If this is a crime of domestic violence**, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

JM (s) **If this crime involves prostitution, or a drug offense associated with hypodermic needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

JM (t) **The judge may sentence me under the drug offender sentencing alternative (DOSA)** if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of **three to six months**, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of

corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

— (u) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

JM (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69 50.401(2)(b).

JM (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

JM (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds **I used a motor vehicle in the commission of this felony**.

JM (y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61 502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46 61.5055(14)

JM (z) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements

- JM (aa) The crime of _____ has a mandatory **minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of ~~juvenile court jurisdiction~~. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- JM (bb) I am being **sentenced for two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- JM (cc) I understand that the offense(s) I am pleading guilty to include(s) a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- JM (dd) I understand that the offense(s) I am pleading guilty to include(s) a **deadly weapon, firearm, or sexual motivation enhancement**. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- JM (ee) I understand that if I am pleading guilty to (1) **unlawful possession of a firearm(s) in the first or second degree** and (2) **felony theft of a firearm or possession of a stolen firearm**, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to **unlawful possession of more than one firearm**, I must serve each of the sentences for unlawful possession consecutively to each other.
- JM (ff) If I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated RCW 74.08.290.
- JM (gg) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9 94A.690

- 7 I plead guilty to count(s) 1 as charged in the ORIGINAL Information, dated APRIL 3, 2013 I have received a copy of that Information and reviewed it with my lawyer.
- 8 I make this plea freely and voluntarily
- 9 No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10 No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

FURTHERMORE, THE INJURIES SUFFERED BY C.C. ^{WERE SUBSTANTIALLY EXCEEDED} THE LEVEL OF BODILY HARM NECESSARY TO SATISFY THE ELEMENTS OF THIS OFFENSE AS C.C. HAD NUMEROUS INJURIES TO HIS HEAD, TOWHEEN, RECTUM AND SEVERE BRUISES ALL OVER HIS BODY.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: IN PIERCE COUNTY, WASHINGTON BETWEEN 3/29/13 AND 3/30/13 I UNLAWFULLY AND FELONIOUSLY CAUSED THE DEATH OF C.C. (DOB. 3/5/11), A HUMAN BEING, WHO WAS NOT A PARTICIPANT IN SUCH CRIME. C.C. WAS PARTICULARLY VULNERABLE BECAUSE HE WAS ONLY TWO YEARS OLD AND INCAPABLE OF RESISTING AND MY CONDUCT WAS DELIBERATELY CRUEL. I HAD BEEN DRINKING - A LOT - AND LOST MY TEMPER AFTER HE PEE'D ALL OVER ME WHEN I WAS CHANGING HIS DIAPER SO I PICKED HIM UP AND SLAMMED HIM INTO THE FLOOR. WHEN HE WOULD NOT STOP CRYING I PUT MY FINGER INTO HIS RECTUM SO MY ACTS WERE DONE IN THE COURSE OF THE CRIME OF RAPE OF A CHILD IN THE FIRST DEGREE, RESULTING IN THE DEATH OF C.C.

JM

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

JM

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Signature]
Defendant

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

[Signature]
Prosecuting Attorney

[Signature] 21395
Defendant's Lawyer

Angelica Williams 36673
Print Name WSBA No

RICHARD WARNEK 21395
Print Name WSBA No.

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below

Interpreter's Declaration I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

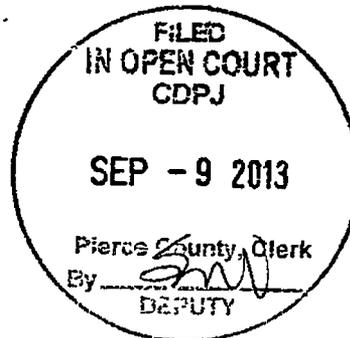
Interpreter Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: _____

Byron H. ...

Judge



APPENDIX C



13-1-01369-1 41179505 STTDFG 09-10-13



**Superior Court of Washington
For Pierce County**

State of Washington _____
Plaintiff

vs

JAKE J. MUSGA _____
Defendant

No. 13-1-01369-1

Statement of Defendant on Plea of Guilty to Sex Offense (STTDFG)

1. My true name is: JAKE JOSEPH MUSGA
2. My age is: 19
3. The last level of education I completed was H.S.
4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's names are: KEITH HALL AND RICHARD WARNER.

(b) I am charged with the crime(s) of RAPE OF A CHILD I (COUNT 2) as set out in the ORIGINAL Information, dated, APRIL 3, 2013 copy of which I hereby acknowledge previously receiving and reviewing with my lawyer JM (Defendant's initials)

The elements of this crime [] these crimes are as set out in the ORIGINAL Information, dated APRIL 3, 2013 copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. JM (Defendant's initials)

_____ Additional counts are addressed in Attachment "B"

5 I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime

was allegedly committed;

- ✓ (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- ✓ (c) *The right at trial to hear and question the witnesses who testify against me,*
- ✓ (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me,
- ✓ (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty,
- ✓ (f) The right to appeal a finding of guilt after a trial as well as other pre-trial motions such as time for trial challenges and suppression issues.

6. In Considering the Consequences of My Guilty Plea, I Understand That:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL CONFINEMENT (standard range enhancement)	ACTUAL (standard including)	COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000 For crimes committed prior to July 1, 2000 see paragraph 6(f))	MAXIMUM TERM AND FINE	
1								
✓ 2	2	111 - 147 mos*	N/A	111 - 147 mos		LIFE	LIFE AND/OR \$50,000.	
3		* THIS IS AN INDETERMINATE SENTENCE WITH A MAXIMUM OF LIFE PURSUANT TO RCW 9.94A.535						

* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are (F) Firearm, RCW 9.94A.533, (D) Other deadly weapon, RCW 9.94A.533, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) Criminal street gang involving minor, RCW 9.94A.533, (AE) Endangerment while attempting to elude, RCW 9.94A.533

- ✓ (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- ✓ (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- ✓ (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history

is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

✓ (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

✓ For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.507: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses

Rape in the first degree	Rape in the second degree
✓ Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, or if my crime is failure to register as a sex offender, and this is my second or subsequent conviction of that crime, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006 For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a

frail elder or vulnerable adult

Community Custody Violation: If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation

(g) The prosecuting attorney will make the following recommendation to the judge:

Open recommendation - State seeking exceptional

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

(h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so (except as provided in paragraph 6(f)). I understand the following regarding exceptional sentences:

(i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence

(ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.

(iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act

(iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

(i) **If I am not a citizen of the United States,** a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States

- ✓ (j) I understand that I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.
- ✓ (k) I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled Wash. Const. art. VI, § 3, RCW 29A.04 079, 29A.08 520.
- (l) Government assistance may be suspended during any period of confinement.
- ✓ (m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.
- (n) I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay a \$100.00 DNA collection fee.
- (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

Notification Relating to Specific Crimes: If any of the following paragraphs *DO NOT APPLY*, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that *DO APPLY*.

_____ (p) ✓ This offense is a most serious offense or "strike" as defined by RCW 9 94A 030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

JM (q) ~~Special sex offender sentencing alternative~~ In addition to other eligibility requirements under RCW 9.94A 670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11

For offenses committed before September 1, 2001 The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing

alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment, I will have restrictions and requirements placed upon me, and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of the minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after July 1, 2005; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring, and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

____ (r) If this is a crime of domestic violence, the court may order me to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

____ (s) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

JM (t) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.

JM (u) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[p].

JM

(v) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts ____ and ____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

JM

(w) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

JM

(x) For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.

7. I plead guilty to: count(s) 2. as charged in the ORIGINAL Information, dated APRIL 3, 2013 I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: IN PIERCE COUNTY, WASHINGTON BETWEEN 3/29/13 AND 3/30/13 I WAS MORE THAN 24 YEARS OLDER THAN CC (DOB 3/5/11) WHEN I UNLAWFULLY AND FELONIOUSLY ENGAGED IN SEXUAL INTERCOURSE WITH CC, MY GIRLFRIEND'S SON, WHO WAS TWO YEARS OLD, NOT MARRIED TO ME OR IN A STATE REGISTERED DOMESTIC PARTNERSHIP WITH ME. I HAD BEEN DRINKING - A LOT - WHEN I LOST MY TEMPOR AFTER HE PEE'D ON ME WHEN I WAS CHANGING HIS DIAPYR AND I PUT MY FINGER IN HIS RECTUM WHICH WAS DELIBERATELY CRUEL BECAUSE OF HIS AGE.

JM

[] Instead of making a statement, I agree that the court may review the police reports and/or a

statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

- 12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Signature]
 Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature] 21895
 Defendant's Lawyer

[Signature]
 Prosecuting Attorney

Angelica Williams 36673
 Print Name WSBA No.

RICHARD WATKIN 21895
 Print Name WSBA No.

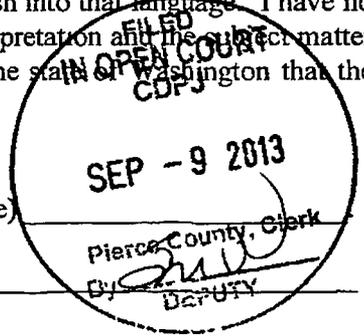
The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box].

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

Interpreter's Declaration: I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

Signed at (city) _____, (state) _____, on (date) _____

Interpreter _____ Print Name _____



I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated. Sept. 9, 2013
[Signature]
 Judge

Case Name Jake Musy Cause No. 13-1-01369-1

"Offender Registration" Attachment: sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44 128. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A 44.128, I will be required to register

If I am a resident of Washington, I must register with the sheriff of the county of the state of Washington where I reside I must register within three business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me I must also register within three business days of my release with the sheriff of the county of the state of Washington where I will be residing.

If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation I must register within three business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me. I must also register within three business days of my release with the sheriff of the county of my school, where I am employed, or where I carry on a vocation.

2. Offenders Who are New Residents or Returning Washington Residents If I move to Washington or if I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state

3. Change of Residence Within State. If I change my residence within a county, I must provide, by certified mail, with return receipt requested or in person, signed written notice of my change of residence to the sheriff within three business days of moving If I change my residence to a new county within this state, I must register with the sheriff of the new county within three business days of moving. Also within three business days, I must provide, by certified mail, with return receipt requested or in person, signed written notice of my change of address to the sheriff of the county where I last registered

4. Leaving the State or Moving to Another State If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If I move out of state, I must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom I 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) I must give notice to the sheriff of the county where I am registered within three business days:

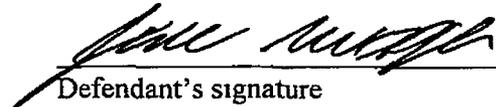
- i) before arriving at a school or institution of higher education to attend classes,
- ii) before starting work at an institution of higher education; or
- iii) After any termination of enrollment or employment at a school or institution of higher education

6. Registration by a Person Who Does Not Have a Fixed Residence Even if I do not have a fixed residence, I am required to register Registration must occur within three business days of release in the county where I am being supervised if I do not have a residence at the time of my release from custody

Within three business days after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register with the sheriff of the new county not more than three business days after entering the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I must keep an accurate accounting of where I stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24 550.

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

Date: 9-6-13


Defendant's signature

APPENDIX D

JAMES NEWTON

JAMES NEWTON, Attorney at Law, PLLC.
A PROFESSIONAL LIMITED LIABILITY CORPORATION

JAMES V. NEWTON - Attorney at Law
ROBERT G. MEYERS - Attorney at Law
RICHARD WARNER - Of Counsel

KEITH R. HALL - Managing Attorney
BRADLEY G. BARSHIS - Attorney at Law

ATTORNEY-CLIENT FEE AGREEMENT

This fee agreement (hereafter the "Agreement") is entered into between JAMES NEWTON, ATTORNEY AT LAW, PLLC, (hereinafter the "Firm" or "Attorney") and or James Newton, and or Keith Hall, and or Robert Meyers, and or Bradley Barshis, and or Richard Warner and Jake Musga (hereafter "Client"). Attorney agrees to represent Client in connection with **Murder in the First Degree and Rape of a Child in the First Degree** (hereinafter the "Matter") in the Pierce County Superior Court.

ATTORNEY AND CLIENT MUTUALLY AGREE AS FOLLOWS:

1. Scope of Representation: The Firm will provide services reasonably necessary to defend Client in the Matter, including pre-charge investigation and representation from arraignment through trial or other resolution upon payment for those services.

1. (a) This Agreement does not include representation of Client in any of the following: appeal, retrial after a mistrial or hung jury; civil or administrative proceedings, even if related to the Matter; or post-trial or post-sentencing motions of any kind. [If client requests that representation of these matters be undertaken, client will be responsible for payment of additional legal fees of \$385.00 per hour]

1. (b) Client understands that the Matter may conclude without a trial. In the event that the matter is resolved by a deferred prosecution, stipulated order of continuance, pre-trial diversion, continuation without finding, deferred sentence or other deferred disposition, the Firm's obligations will be satisfied, and the Firm will be entitled to withdraw subject to court approval. In the event that the Matter proceeds to trial and the trial results in a mistrial or hung jury, the Firm's obligations will be satisfied, and the Firm will be entitled to withdraw subject to court approval.

1. (c) Client understands that if the Pierce County Prosecuting Attorney elects to proceed with this case as a death penalty matter, the resources necessary to defend the client will be significantly greater. This agreement does not contemplate a death penalty defense, the Firm's obligations will be satisfied, and the Firm will be entitled to withdraw subject to court approval. If this event occurs, client will be responsible for the amount of time spent on the matter, calculated at \$385.00 per hour.

2. Attorney Fees: Upon signing this agreement, Client agrees to pay a flat fee of \$105,000.00, for the services described in Section 1 of the Agreement. The flat fee shall be paid as follows: Initial payment of \$5000.00 previously received, \$10,000.00 payment due on April 12, 2013, \$75,000 payment due on May 1, 2013, and then payments of at least \$2000.00 per month due on the 1st day of the month commencing on June 1, 2013 until the remaining balance is satisfied.

Upon the Firm's receipt of all or any portion of the flat fee, the funds are the property of the Firm and will not be placed in a trust account. The fact that Client has paid the fee or a portion of the fee in advance does not affect Client's right to terminate the client-lawyer relationship. In the event the client-lawyer relationship is terminated before the agreed-upon legal services have been completed, Client may or may not have a right to a refund of a portion of the fee.

Examples of circumstances which could render the fee unreasonable and thus trigger an obligation to refund some or all of the fee include, but are not limited to: death of the client or lawyer, lawyer's loss of his license, or failure of lawyer to perform the services described in this Agreement. A fee is not unreasonable simply because the Matter is resolved quickly or easily.

3. Costs and Expenses: Client agrees to pay costs and expenses (hereafter "Costs") related to the Matter, including but not limited to: depositions; interviews; expert witnesses; consultants; interpreters; court reporters; transcription; extensive copying work; collect calls; messenger services; service of process; filing fees; obtaining records; travel (including transportation, lodging, meals, and related costs); and trial exhibits. Costs that are advanced by Attorney shall be reimbursed by Client. Client understands that he or she is responsible for all Costs regardless of any limitation on the total amount of attorney fees.

4. Trial Fees: The retainer does include the trial fees of ~~\$2,500 FOR THE FIRST DAY AND \$1,500 FOR EVERYDAY THEREAFTER~~ of trial. In the event the client decides to proceed to trial, the additional trial fee shall be paid two weeks (14 days) prior to the trial date set by the court. If the case is resolved during the two weeks prior to trial the additional monies paid by the client for trial shall be refunded in full to the client. After trial begins, the additional fees become non-refundable and are the property of the Firm.

5. Advance Deposit for Costs: Client agrees to provide the Firm with \$30,000.00 as an advance on Costs. Client agrees to provide the Firm with an advance on Costs as requested by the Firm. This advance cost deposit and any additional advances for costs will be deposited into a trust account which does not bear interest to the Client or the Firm and which will be drawn upon by the Firm to pay Costs.

6. Billing Statements: Attorney will provide Client with periodic statements to reflect billings for Costs incurred in the Matter. Fourteen days after mailing or delivering the billing

statement, the Firm will withdraw from the trust account the amount due for Costs, unless Client objects. In the event that Client has not provided sufficient funds to cover the fees or Costs billed, Client agrees to remit the balance owed within 14 days of receipt of the billing statement and to supplement the trust account to meet the minimum balance requirement specified above.

7. Refund of Balance in Trust Account: At the conclusion of the Matter, any funds deposited in the trust account that are not used to pay Client's financial obligations under this Agreement will be returned to Client, unless Client designates another party at the time of this contract. Client designates Michael J. Musga to receive any refund of balance in trust account.

8. Non-Payment, costs of Collection and Interest: Client will be charged interest of 12 % per month on the balance of any amount that is past due or the maximum allowed by law, whichever is greater. Client will be charged \$25.00 for any check his or her bank refuses to honor. In the event of a dispute regarding this Agreement, Client agrees to pay the costs of collection and enforcement of this Agreement, including, if necessary, attorney fees and costs. Washington law shall govern the resolution of any dispute relating to the enforcement of this Agreement, and the venue of any action shall be King County, Washington.

9. Discharge or Withdrawal from Representation: Client may discharge the Firm at any time. The Firm may withdraw from representation of the Client upon resolution of the Matter. Prior to resolution, the Firm may withdraw either with Client's consent or upon reasonable notice to Client, for good cause, including but not limited to, breach of this Agreement, refusal to cooperate with the Firm on a material issue, or failure or inability of Client to pay fees, Costs, and advances as set forth in this Agreement. Firm may withdraw for the reasons listed in paragraph 1c of this agreement. In addition, the Firm will withdraw if circumstances arise that would render continuing representation unlawful or a violation of the Rules of Professional Conduct. Client understands that once the Firm has formally appeared in court as the representative of Client, withdrawal or discharge may be subject to court approval.

10. File Retention Policy: Three years from the date the Firm's representation has concluded, the Firm may destroy the Firm's client file unless Client makes a specific written request for a copy of the file, and provides a current address at the time the file is to be provided. Client is responsible for the costs of copying and mailing a copy of the firm file.

11. No Guarantee of Results: CLIENT ACKNOWLEDGES THAT THE FIRM HAS MADE NO GUARANTEES REGARDING THE OUTCOME OF THE MATTER AND THAT ANY STATEMENTS ATTORNEY HAS MADE REGARDING THE MERITS OF THE CASE ARE PROFESSIONAL OPINIONS ONLY, AND NOT A GUARANTEE.

12. Cooperation of Client: Client agrees to keep the Firm advised of his or her addresses and contact information, to appear at office appointments and court hearings, and to cooperate with reasonable requests of the Firm related to the Matter.

13. Final Agreement: This Agreement represents the final and mutual understanding of the parties. It replaces and supersedes any prior agreements or understandings, whether written or oral. This Agreement may not be modified, amended, or replaced except by another signed written agreement of the parties.

14. Independence of Counsel and Payments by a Third Party: A third party (hereafter "Payor") may provide funds to Attorney to satisfy Client's financial obligations under this Agreement only if Client consents to such an arrangement and Payor signs this Agreement. By signing this Agreement, Payor acknowledges and agrees to the following:

14 (a) that no attorney-client relationship exists between Attorney and Payor and that Attorney has not and will not provide legal advice to Payor, including advice regarding the wisdom of entering into this Agreement;

14 (b) that Attorney has an ethical duty to Client to maintain confidentiality and that Attorney will not disclose confidential information relating to Client's Matter to Payor without Client's consent;

14 (c) that Payor cannot interfere with Attorney's independent professional judgment or with the attorney-client relationship;

14 (d) that in the event that Payor disagrees with Client's decisions regarding the Matter, Attorney has an ethical obligation to abide by the Client's decisions despite Payor's objections;

14 (e) that all funds paid on Client's Matter may be used by the Attorney for payment of fees and Costs for the duration of the Matter and that Attorney will not issue any refund until the Client's final invoice has been paid at the conclusion of the Matter; and

14 (f) that any funds provided to Attorney by Payor that are not used to satisfy Client's financial obligations under this Agreement will be returned to the that he or she designates at the time of disbursement.

Client and Attorney have discussed the issue of payments from a third party, and Client specifically consents to such payments.

BY SIGNING BELOW, I ACKNOWLEDGE THAT I HAVE READ THIS AGREEMENT IN ITS ENTIRETY, UNDERSTAND ITS TERMS AND AGREE TO THEM.

CLIENT: _____

DATED: _____

GUARANTOR: Michael Luoga

DATED: 4-12-13

GUARANTOR: James Luoga

DATED: 4-12-13

ATTORNEY: _____

DATED: _____

APPENDIX E

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

JAKE JOSEPH MUSGA,

Petitioner,

NO. _____

vs

COURT OF APPEALS DIVISION II
DECLARATION OF JANET MUSGA
PERSONAL RESTRAINT PETITION

STATE OF WASHINGTON,

Respondent.

1. I, Janet Musga, am over the age of 18 and am competent to make this declaration.

2. I am the mother of Jake Joseph Musga, who was charged in Pierce County Superior Court under cause no. 13-1-01369-1, entered a guilty plea, was sentenced, and is now incarcerated in the Washington State Penitentiary at Walla Walla, Washington.

3. On March 30, 2013 I received a phone call that my son had been arrested and booked into the Pierce County Jail on a murder charge.

4. I contacted his father, Mike Musga and immediately began looking for an attorney to represent Jake.

5. I had never hired an attorney before.

6. While looking on the internet, I found the Law Firm of James Newton. Attorney Keith Hall agreed to represent Jake at his arraignment on April 3, 2013.

1 7. I then had further discussions with Mr. Hall. He told me that he had never
2 represented a person charged with a felony but would be willing to represent Jake if we agreed
3 to hire co-counsel, Richard Warner. Mr. Hall stated that Mr. Warner was an attorney he had
4 worked with before. Mr. Hall further told me Richard Warner was an expert who sits on the
5 panel for Washington State Death Penalty cases and was experienced in this area. Mr. Hall said
6 that he would represent Jake so long as this did not become a death penalty case. Mr. Hall said
7 that he did not handle those type of cases and that we would need to hire a different law firm if
8 Jake's case became a death penalty case. Mr. Warner agreed if Jake was charged with the death
9 penalty he would represent Jake and the court at that time would assign a public defender to
10 help him, if it came to that.
11

12 8. We talked about whether Jake should use a public defender. Mr. Hall strongly
13 advised against using a public defender in Pierce County. He told us that the prosecutors and
14 the public defenders are all tight, as in good friends. He said that Jake would not get good
15 representation from the public defenders "down there".
16

17 9. Mr. Hall also described the Pierce County public defenders as "some are good
18 and some are bad you just never know what you would get and that you want the best for your
19 son."
20

21 10. Of course I wanted the best for my only child.
22

23 11. His father, Mike and I agreed to hire Hall and Warner. They seemed expensive.
24 Their fee for representing Jake was \$105,000 a flat fee earned upon receipt, with \$30,000 for
25 investigation. Mike and I made arrangements to obtain the funds, including charging my visas
to their credit limit line, making \$1,000 payments for 12 months, and accessing Mike's 401[k].
Jake signed a release so that the attorneys could discuss his case with us.

1 12. During the course of the case, I had many contacts with my son.
2 I also had many contacts with the attorneys. As early as April 5, 2013, I sent them an email
3 regarding information I had received from Laura Colley's mother about a drug bust at the
4 apartments earlier that week and also provided information about witnesses who had seen Jake
5 out of the apartment at 10:30 p.m. -11:30 p.m. or so on the night of March 29th. I know that
6 they did not follow up on this important lead. Both attorneys dismissed this information as
7 unreliable source or hearsay. Additionally, I sent a picture of CC that Jake had sent me at 5:19
8 on 3/29/13 to Mr. Hall telling him that the child had been abused before Laura left that night.
9 Laura admitted to me on 3/30/13 at around 9 or 10pm that she had inflicted those bruises etc.
10 on CC during an incident around the 28th of March 2013, when she was holding him down
11 trying to brush his teeth.
12

13 13. It was clear that the attorneys did not spend much time with him. Nor did they
14 answer questions about his case. I brought hand written questions to our meetings and these
15 questions were either dismissed or given a brief "we will get to this at a later date".

16 14. I made it a point to attend every hearing not only to keep up with the case but
17 also because I wanted Jake to see that I was there to support him.

18 15. On one occasion, I was told I didn't have to go to any of "smaller" hearings that
19 it was just technical court/lawyer information "behind the scene stuff". I was at court for an
20 omnibus hearing and I could not tell what had happened. That was May 10, 2013. When I
21 asked the attorneys about it in an email, I was told that the omnibus hearing had happened
22 "behind the scenes" and also that it had been continued. As it was, there never was an omnibus
23 hearing in Jake's case.
24
25

1 16. On more than one occasion Mike and I were told that the State had threatened to
2 charge Jake with aggravated murder if he did not plead guilty. Attorneys Hall and Warner
3 believed due to his age the State would not seek the death penalty; that they were going for
4 aggravated murder and child molestation “life without possibility of parole”. We were told this
5 many times before he plead guilty.

6 17. In August Jake’s attorneys told us that they were still waiting for the test results
7 from the DNA. They said a defense expert then would need to re-do the State’s test and check
8 everything to make certain that this complicated procedure had been done properly. This made
9 sense to Mike and me. Warner said this could push the trial into 2014. None of us was as
10 concerned with a continuance of that length. We were more focused on getting a fair trial for
11 Jake.

12 18. Shortly after this conversation attorneys Hall and Warner came to us and said
13 that the State would not agree to a continuance into 2014. They said that Mr. Ausserer was
14 going on paternity leave and that the case needed to be wrapped up quickly.

15 19. They also said that the State had given Jake 7 days in which to decide to plead
16 guilty as charged or they would change the charges to the aggravated murder.
17

18 20. We were terrified and encouraged Jake to take the deal.
19

20 21. Jake did enter a guilty plea to the charges with no promise from the State about
21 what sentence they wanted. The State was free to ask for anything at all. However, Mr.
22 Warner repeatedly made the statement that Jake would receive 25-30 years and be out in
23 twenty. Mr. Warner said the court would be lenient due to Jake’s age.

24 22. Between the plea and sentencing we repeatedly asked to meet with Mr. Warner
25 and Mr. Hill to talk about the sentencing hearing. I sent Mr. Hall an email on November 12,

1 2013: "I understand that you are busy and have other cases that you are involved in. But we
2 have less than 10 days until Jakes sentencing and I can not get a hold of you or Angel. I do
3 not mean to be rude; but we are still paying you to represent Jake and part of this is to help us
4 with letters to the Judge if I am not mistaken."

5 23. There was no presentence brief or memorandum prepared for Jake as we had
6 discussed. I gathered some letters and the attorneys submitted them with a psychological
7 evaluation that no one else had ever seen. Mr. Hall finally told us the letters could not state
8 Jake's innocence or anything but positive reference to the family. Mr. Hall additionally stated
9 that we had to mention Jake's guilt. Mr. Hall made a minor change to Crystal's letter and we
10 sent it back signed.

11 24. I had very little contact with the attorneys after the sentencing. Late in
12 2013/early 2014 I contacted Jake's attorneys to get Jake's file materials. I told them I wanted to
13 do something for Jake.

14 25. When I stated this to Mr. Hall, he asked me why I would want to do that. He
15 assured me that my son is exactly where he needs to be and that I should just let it be!
16 These words struck me as consistent with the attorneys' view of Jake all through this case and
17 the reason why they did so little on this case.

18 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
19 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. SIGNED AT
20 Arlington, WASHINGTON. THIS 17TH DAY OF NOVEMBER, 2014.

21
22 Janet Musga
23 JANET MUSGA

24
25 DECLARATION OF JANET MUSGA

LAW OFFICES OF BARBARA COREY, PLLC
902 South 10th Street
Tacoma, WA 98405
253.779.0844

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

JAKE JOSEPH MUSGA,
Plaintiff,
vs.
STATE OF WASHINGTON,
Defendant.

NO.

DECLARATION OF FAX
SIGNATURE

KIM REDFORD, declares and states as follows:

The foregoing facsimile signature of Janet Musga, in which is page five (5) of the pleading entitled Declaration of Janet Musga, is a complete and legible facsimile that I have examined personally and that was received by me via Fax number (253) 272-6439.

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

SIGNED this 18th day of November, 2014.


KIM REDFORD, Legal Assistant

APPENDIX G

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

JAKE JOSEPH MUSGA,
Petitioner,

vs

STATE OF WASHINGTON,
Respondent.

NO. _____

COURT OF APPEALS DIVISION II

DECLARATION OF JAKE JOSEPH
MUSGA

PERSONAL RESTRAINT PETITION

1. I am Jake Musga. I am the petitioner in this personal restraint petition, over the age of 18, and competent, to make this declaration.
2. I was charged with murder in the second degree and child rape in the first degree on March 30, 2013 in Pierce County Superior Court No. 13-1-01369-1. My birthday is March 5, 1994. I had just turned 19 years old when I was charged with these crimes.
3. I was arraigned on April 3, 2013. At that time, I was represented by attorney Keith Hall, who had filed a “notice of appearance – arraignment only” on my behalf. The fee for representation was \$105,000 plus \$30,000 for investigation.
4. My parents, Janet Musga and Mike Musga, paid for this representation by mortgaging my mother’s home and emptying my father’s 401[k]. I signed a release so that my attorneys could discuss my case with my parents. I include this information only to inform the court that the decision to retain private counsel was not made lightly.

DECLARATION OF JAKE JOSEPH
MUSGA

LAW OFFICES OF BARBARA COREY, PLLC
902 South 10th Street
Tacoma, WA 98405
253.779.0844

- 1 5. On April 17, 2013, Hall and attorney Richard Warner filed notice of appearance on
2 my behalf. They continued as my attorneys throughout this matter.
- 3 6. Hall told me that he could not try the case by himself because he did not handle
4 felonies. Warner told me that if the State changed the charge to aggravated murder
5 and sought the death penalty, then I would need another attorney because he did not
6 handle those kinds of cases. He said they were “too emotional” for him.
- 7 7. I was incarcerated in the Pierce County Jail on \$2,000,000. 00 throughout the
8 pendency of this case.
- 9 8. During this case, my attorney visited me for fewer than 29 hours total.
- 10 9. Although I repeatedly asked to see the police reports and witness statements in my
11 case, I was not given the opportunity to do so.
- 12 10. I know now that there were more than 800 pages of discovery in my case. Had I
13 been able to see the discovery, I would have provided ideas to my attorneys for
14 investigation to assist with my case.
- 15 11. My attorneys showed me three items of “discovery” in this case: [1] the photos they
16 said were from the autopsy; [2] a transcript they said was from the 911 call; [3]
17 Laura Colley’s Facebook friends. I asked to see a copy of the autopsy report but the
18 attorneys kept telling me that it was not finished – they told me this even as late as
19 July. However, I know that the attorneys received a copy of the autopsy report from
20 the State on June 13, 2013.
- 21 12. My attorneys early on told me that I that there was a possibility that if I failed to
22 plead guilty as charged I could be charged with aggravated murder and face the
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25

1 death penalty. I relied on their representations that this was a possibility. Of course I
2 was scared by this possibility.

3 13. I did give them a lengthy history of my relationship with Laura Colley, the mother
4 of CC, the child who died. I met Laura in a drug rehabilitation program and fell in
5 love with her. She is five years older than me. I was 18 at the time. I was totally
6 enamored with her. I met her parents and CC when they visited one weekend. CC
7 had purplish-red bruises on him then and the family told me that he was a “wild
8 child.” Laura’s mother said CC did not like his baths and that he would bang his
9 head against the bathtub and also that he bruised a lot just being a kid. Laura and I
10 decided to leave rehab before the program was through and to go live with her
11 family. Laura and her mother spanked CC a lot. There were so many marks on CC
12 that Laura’s mother said they could not take him to the doctor because the doctor
13 would take him away. Laura’s mother said she would take over the discipline of CC
14 from then on. She did. I did not see any difference in the bruising on CC. My
15 relationship with Laura covered a time span of 6 weeks.

17 14. I wanted to be a member of Laura’s family and although I did not discipline CC, I
18 did not say anything to them either.

19 15. Laura’s mother and Laura also told me that CC bruised easily because he was a
20 “wild child”, had a disease where he bruised easily – hemophilia, and also was born
21 addicted to Suboxene. Suboxene is a methadone substitute, used to treat heroin
22 addictions.

24 16. I later learned that Laura had CC up for adoption and that she did not want him.
25

1 17. Laura obtained employment in Tacoma and we moved there. Laura's friend Ricky
2 Saldiva lived in the apartment complex that she managed and where we lived. Laura
3 told me that Ricky sold drugs, including heroin. I believe that she purchased drugs
4 from him. I base my belief on my knowledge of the behaviors of drug users. I did
5 not use drugs during this time. I did on occasion use alcohol as did Laura. I also
6 know that Laura often gave CC a little alcohol (usually Vodka) in his bottle/sippy
7 cup to calm him down and/or help him sleep at nap time and/or at night.
8

9 18. I knew Ricky by sight but I did not have any acquaintance with him.

10 19. Laura had a bad temper and hit CC a lot. In the days before March 29, 2013, she hit
11 CC, including hitting him on his face and the rear top area of his head because he
12 was uncooperative when brushing his teeth, did not want to eat his food at meal
13 time, resisted getting dressed, and other things.

14 20. I sent photos of these bruises to my mother because I was concerned about them.

15 21. I gave my attorneys information about Laura's whereabouts and the whereabouts of
16 her sister on the night of March 29, 2013. No verification was carried out by either
17 my Attorney or my Investigator . When I raised this matter with my Attorney's I
18 was told that a direct interview of Laura was not possible as it would create "a
19 conflict of interest." This would have assisted in my defense. I do not know how
20 interviewing an important witness for me would create "a conflict of interest."
21

22 22. I have documented my jail visits with my attorneys. I never communicated with my
23 attorneys on the telephone although there is a secure attorney-client line. The
24 attorneys also never sent any mail to me although "legal mail" is not opened and
25 goes directly to in-mates.

1 23. Sometime during the summer of 2013, my attorneys came to me and told me “to
2 stop talking” to other in-mates about my case. I had not been talking to anyone
3 about my case. There had been a lot of publicity about my case when it was
4 charged and a lot of the other in-mates seemed to know quite a bit about it without
5 me saying a word. Again, I don’t know the sources of their information except to
6 say that I certainly was not going to discuss my business with any one in jail. My
7 attorneys lit into me and accused me of sabotaging my case. They were very quick
8 to disbelieve what I said. I became uncomfortable with them.
9

10 24. In August 2013, my attorneys told me that the prosecutor had given me 7 days to
11 decide whether to plead guilty. They recommended that I plead guilty.

12 25. On August 29, 2013, my attorneys met with me after they said they had met with the
13 prosecutors. They told me that I needed to decide that day whether to plead guilty.
14 They repeated that if I did not, I would be charged with aggravated murder, a charge
15 that carries a possible death penalty. I agreed to plead guilty. I had heard people in
16 the jail talking about Newton pleas where a person can plead guilty without actually
17 admitting that he committed any criminal acts. I wanted to make that kind of plea. I
18 told my attorneys that. I thought I would be making that kind of plea.
19

20 26. My attorney Richard Warner visited me on August 8, 2013, for about an hour;
21 August 19, 2013, for about an hour; August 22, 2013, for about an hour; August 26,
22 2013 for about an hour and forty-five minutes. Attorneys Warner and Keith Hall
23 visited me for less than an hour on August 29, 2013.

24 27. I never had one session that was devoted solely to going through the lengthy plea
25 papers and explaining them to me. We discussed them piecemeal and did go through

1 them in that manner. This did not enable me to have a complete and thorough
2 understanding. I trusted my Attorneys and believed, as a result, that the
3 representations they were making to me were in best interest,

4 28. When I read through the plea papers on the murder case, they were already filled
5 out. I was told that the boxes/paragraphs that applied to my case were
6 marked/checked.

7 29. With regard to the plea to the charge of first degree murder in paragraph “h”, the
8 form provides in [i]: **“The judge does not have to follow anyone’s**
9 **recommendation as to sentence.** The judge may impose an exceptional sentence
10 below the standard range if the judge finds mitigating circumstances supporting an
11 exceptional sentence.” There is a check by this affirming that this was discussed
12 with me and that I was told that this applied in my case. [h]/iii provides: “The
13 judge may also impose an exceptional sentence above the standard range if the State
14 and I agree that justice is best served by the imposition of an exceptional sentence
15 and judge agrees that an exceptional sentence is consistent with and in furtherance
16 of the interests of justice and the purposes of the Sentencing Reform Act.” There is
17 a check by this affirming that this was discussed with me and that I was told that
18 this applied in my case. The absence of any check mark by sections [ii] and [iv]
19 affirm that these sections were not discussed with me and that I was not told that
20 they could apply in sentencing in my plea to second degree murder.

21 30. In contrast, in my plea to the charge of child rape in the first degree, I was advised
22 of and informed that paragraph [h][i] and [iv] would apply in my case. [h]/i
23 provides: “The judge may impose an exceptional sentence below the standard range
24
25

1 if the judge finds mitigating circumstances supporting an exceptional sentence.”
2 [h]/iv/ provides: “The judge may also impose an exceptional sentence if the State
3 has given notice that it will seek an exceptional sentence, the notice states
4 aggravating factors upon which the requested sentence will be based, and the facts
5 supporting an exceptional sentence are proven beyond a reasonable doubt to a
6 unanimous jury, to a judge if I waive a jury, or by stipulated facts.”

7
8 31. I remember specifically talking about the paragraphs on how exceptional sentences
9 could happen. Mr. Warner and I went through those. He checked the ones that
10 applied on each charge. These were important to me and I wanted to understand
11 them clearly because I was so nervous and scared about what the State might try to
12 do to me.

13 32. In this case, I entered a factual plea, not a Newton/Alford plea. To do so, I signed
14 and adopted as my own a statement written by my attorney that sufficed to meet all
15 of the elements of the crimes charged. I thought that the “aggravating
16 circumstances” were elements of the crimes. This is so because I was never told
17 otherwise and also because on the guilty plea form, I was informed of the standard
18 ranges that applied. I did not know that the language in the information and the plea
19 form that I signed had the effect of automatically making it possible for the State to
20 change my sentence. I knew that the State wanted a sentence different than the
21 standard range but, of course, I did not know what it was. I also believed the State
22 needed to “prove” that such a sentence was appropriate at the sentencing hearing. I
23 did not, however, stipulate to facts to support an exceptional sentence. I was never
24 told that by entering a plea I was giving the State any assistance in getting a longer
25

1 sentence for me. I never would have agreed to do that. Nor did I ever waive my
2 right to a jury trial on the sentencing issue. Further, although the State did note in
3 paragraph [g] of each plea form that it would “make the following recommendation
4 to the judge: open recommendation – State seeking exceptional”, the State did not
5 provide notice as required by statute because the State’s notice in paragraph [g] did
6 not state “aggravating factors upon which the requested sentence will be based.”
7 How was I to know that the State believed that I had already “stipulated” to
8 aggravating factors?
9

10 33. When my plea was entered, my attorneys stated in court that they were going to
11 have an “expert” come in to evaluate me. This also was news to me. I did not know
12 the purpose of the evaluation and was advised to not discuss the incident with the
13 doctor. I was advised to tell him that I did not remember many of the details of what
14 had happened and that I must have had an alcoholic black-out. Of course this is not
15 what I had told the police or what I had written in my plea statements only ten days
16 prior to the examination. I did give Dr. Muscatel lots of details about what
17 happened. Muscatel report, pages 6-7. I did not give a lot of details about Laura’s
18 involvement partly because I still loved her but mostly because I thought my
19 attorneys and my expensive investigator would have verified that she had an
20 extensive history of physical abuse of CC, had likely had prior CPS referrals for the
21 same [this is based on her statements to me], had been in and out of the house all
22 evening/night with her partying friends [she was celebrating her birthday and going
23 to bars where I could not go because of my age] and that they would present that in
24
25

1 their sentencing materials. I thought that would be far more credible. I had told
2 them who was present and who had been with CC besides me.

3 34. However, I also told Dr. Muscatel that I believed I had blacked out that night and
4 thus could not remember what had happened. I am not really sure if I had a
5 blackout or if some of the details are just sketchy because the event was so
6 traumatic. However I believe that my attorneys should have discussed the purpose
7 of the expert's visit with me, that he would write a report and that he would give it
8 to the prosecutors and the court.

9 35. I also understand that the attorneys did not need to give the report to anyone.
10
11 However, having stated that they going to give the report to the prosecutor, I think
12 they were going to give it to them no matter what. I never saw the report before
13 sentencing.

14 36. On November 8, 2013, I was interviewed by a presentence report writer. This
15 interview, of course, occurred in the Pierce County Jail. Attorney Keith Hall [the
16 misdemeanor half of my legal team] attended the interview. We had not met in
17 advance of that day and I did not know the purpose of the presentence interview, the
18 presentence report, and its consequences.

19 37. The presentence report was filed with the court and apparently provided to the court
20 a day or so before my sentencing hearing on November 21, 2013. The Superior
21 Court file stamp shows that it was filed with the court on November 20, 2013.

22 38. My attorneys did not visit me after the presentence report was filed. I never read the
23 presentence report. However my attorney Barbara Corey and investigator Patrick
24 Pitt had read it to me verbatim and asked me to comment on the content. Before we
25

1 talked, I did not even know I was entitled to read the presentence report and made
2 objections to the content.

3 39. I had not known that the court rules require the presentence report to be filed 10
4 days before sentencing. I was not afforded the opportunity to review the same. I
5 now know that I have the opportunity to object to misinformation in the report.

6 40. I did not read the presentence report before the sentencing hearing. I was never able
7 to contest the inaccurate and very damning statements that were in that report. I
8 refer specifically to statements attributed to "witness SH" a reported jailhouse snitch
9 who told Det. Vold that I had hit CC in front of Laura and caused her to "flip out."
10 Snitch SH then told Det. Vold that I then "learned not to hit the kid in front of
11 others." Snitch SH also falsely stated that I had admitted giving CC alcohol on prior
12 occasions and that I had no remorse for my actions.

13 41. I now know that supplemental .47 in my discovery is a report drafted by Det. Brian
14 Vold relating a discussion with jailhouse snitch James Herness. I never reviewed
15 this report nor was I advised by my attorneys of this report and content.

16 42. Because I was not given the presentence report to read, I did not know that the date
17 the presentence report writer signed the report, he interviewed the mother of my ex-
18 girlfriend KR. KR's mother gave this description of me: he "was an evil person
19 when he used [drugs], when you looked into his eyes, there was no soul there. He
20 had no boundaries of right and wrong when he used." She described a "180-degree
21 Jekyll and Hyde change when he used." KR's mother attributed many bad acts to
22 me. Had I known this false and damning information was in the presentence
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1 investigation report I would have insisted that my attorneys object to it and ask that
2 it be removed from the document.

3 43. The State's sentencing power point presentation included information regarding
4 physical injuries to the child, including undated photos of injuries inflicted by his
5 mother days prior to the charged events; statements attributed to my health care
6 providers that were obtained in violation of HIPAA; and numerous statements
7 relating to alleged lack of remorse. In fact, any reasonable person viewing the
8 power point presentation would believe that lack of remorse was an aggravating
9 factor sought by the State. [Parenthetically, I entered pleas as charged to an open
10 recommendation, knowing that the State wanted an exceptional sentence. I submit
11 that is highly indicative my sense of responsibility for my actual and more limited
12 role in these events and my remorse therefore.]

14 44. Further, had my case been properly investigated, I am confident that I would have
15 been able to prove that I had a far more limited role in these events than the State
16 attributed to me and that Laura Colley was an active participant. I would not have
17 waived my right to a jury at sentencing. At any rate, no one discussed with me
18 whether I wanted to waive that right. It was simply assumed by the court, the State,
19 and my own attorneys that I would do so.

21 45. I did not see my attorneys before my sentencing date or any time afterwards.

22 46. I did not know that I could appeal the exceptional sentence that was imposed. My
23 attorneys did not inform me of that right. The court did not inform me of that right.

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47. I recently have learned that my attorneys had retained an investigator named David Snyder. I did not know this. I never knew about him, heard about him, met him, or talked to him. If he did anything for my case, I do not know what it was.

48. Neither attorney Warner or Hall produced any form of a plan or discussed what detailed investigation would be performed to establish the full circumstances of my case or any relevant antecedent history.

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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. I FURTHER DECLARE THAT I HAVE EXAMINED THE PERSONAL RESTRAINT PETITION FILED IN CONJUNCTION WITH MY DECLARATION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE AND CORRECT. SIGNED AT WALLA WALLA, WASHINGTON. THIS 17TH DAY OF NOVEMBER, 2014.


JAKE JOSEPH MUSGA

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

JAKE JOSEPH MUSGA,

Plaintiff,

vs.

STATE OF WASHINGTON,

Defendant.

NO.

DECLARATION OF EMAIL
SIGNATURE

KIM REDFORD, declares and states as follows:

The foregoing signature received via email of Jake Musga, in which is page thirteen (13) of the pleading entitled Declaration of Jake Joseph Musga, is a complete and legible scanned email signature that I have examined personally and that was received by me via Mr. Musga's counselor Erik Arroyo at the Washington State Penitentiary from email address: mearroyo@doc1.wa.gov.

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

SIGNED this 18th day of November, 2014.



KIM REDFORD, Legal Assistant

APPENDIX H

Schedule of Attorney Visits/Court and Discovery Dates

No.	Date	Attorney (s)	Time In	Time Out	Court Date	Discovery Date
1	04/01/13					
2	04/02/13	Keith Hall	11:00	12:24	4/1/13 (continued)	
3	04/03/13				04/03/13	
4	04/05/13	K. Hall / R. Warner	10:00	12:14		
5	04/18/13	K. Hall / R. Warner	10:45	12:21		
6	04/23/13				04/23/13 (twice)	
7	04/23/13					04/24/13
8	05/06/13	K. Hall / R. Warner	10:05	11:21		
9	05/07/13					05/07/13
10	05/08/13				5/8/13 (continued)	
11	05/15/13					05/15/13
12	05/16/13	Richard Warner	08:11	11:11		
13	05/22/13	K. Hall / R. Warner	14:12	14:50		
14	05/29/13				5/29/13 (continued)	
15	05/31/13					05/31/13
16	06/10/13	Richard Warner	10:30	12:22		
17	06/13/13					06/13/13
18	06/26/13					06/26/13
19	07/01/13	Richard Warner	12:00	13:26		
20	07/11/13	Richard Warner	09:49	11:34		
21	07/18/13	Richard Warner	11:00	11:56		
22	08/08/13	Richard Warner	14:40	15:54		
23	08/13/13				8/13/13 (continued)	
24	08/13/13					08/13/13
25	08/19/13	Richard Warner	10:00	11:03		
26	08/22/13	Richard Warner	10:31	11:46		
27	08/26/13	Richard Warner	11:00	12:52		
28	08/27/13					08/27/13
29	08/29/13	K. Hall / R. Warner	13:23	14:17		
30	08/29/13					08/29/13

Schedule of Attorney Visits/Court and Discovery Dates

31	09/06/13	K. Hall / R. Warner	10:58	12:05		
32	09/09/13				09/09/13 (cancelled)	
33	09/09/13				09/09/13 (cancelled)	
34	09/09/13				09/09/13	
35	09/12/13	Richard Warner	12:38	13:04		
36	09/17/13				9/17/13 (continued)	
37	09/20/13	Richard Warner	09:45	10:19		
38	10/11/13	Richard Warner	09:38	10:41		
39	11/04/13					11/04/13
40	11/08/13	Keith Hall	12:52	15:08		
41	11/18/13	Richard Warner	08:20	09:29		
42	11/18/13				11/18/13 (cancelled)	
43	11/21/13				11/21/13 (cancelled)	
44	11/21/13				11/21/13	
45	12/05/13				12/05/13	

APPENDIX I

Sent: Tuesday, August 13, 2013 4:58 PM
To: Keith Hall
Subject:

This E-mail includes attached file(s) sent from "RNP7DDBE6" (Aficio 2035).

Scan Date: 08.13.2013 15:57:51 (-0800)
Queries to: scanner@jimnewtonlaw.com
<SDOC8045.pdf>

separator.tiff ↵

Subject: Jake Musga
Date: August 13, 2013 at 4:02:20 PM PDT
From: Keith Hall <Keith@JimNewtonLaw.com>
To: <richardwarnerlaw@gmail.com>
Cc: Angel Lombardo <Angel@JimNewtonLaw.com>

We received an offer in the case today, which I have attached. I also received additional discovery (discs), which I will leave with Angel. The prosecutor would not agree to set out to the first of the year, as Jared Ausserer will be on paternity leave for three month starting in January. So I set the trial to November, and we set OH and a motion to pre-assign judge to September.

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC
610 Central Avenue South
Kent, WA 98032
253.852.6600 office
253.852.6800 fax
keith@jimnewtonlaw.com
www.jimnewtonlaw.com

-----Original Message-----

From: scanner@jimnewtonlaw.com [mailto:scanner@jimnewtonlaw.com]
Sent: Tuesday, August 13, 2013 4:58 PM
To: Keith Hall
Subject:

APPENDIX J

Sent: Tuesday, August 13, 2013 4:58 PM
To: Keith Hall
Subject:

This E-mail includes attached file(s) sent from "RNP7DDBE6" (Aficio 2035).

Scan Date: 08.13.2013 15:57:51 (-0800)
Queries to: scanner@jimnewtonlaw.com
<SDOC8045.pdf>

separator.tiff -

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Keith Hall
Attorney at Law

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www.jimnewtonlaw.com

-----Original Message-----

From: scanner@jimnewtonlaw.com [mailto:scanner@jimnewtonlaw.com]
Sent: Tuesday, August 13, 2013 4:58 PM
To: Keith Hall
Subject:

APPENDIX K

Email Angel@jimnewtonlaw.com

<Pages 635-636.pdf>

<James Herness 11-1-01888-3.pdf>

<Judgment & Sentence.pdf>

separator.tiff -

Subject: RE: Musga Case

Date: August 14, 2013 at 11:27:11 AM PDT

From: Keith Hall <Keith@JimNewtonLaw.com>

To: <richardwarnerlaw@gmail.com>

Yes, I agree.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 9

office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.co

From: richardwarnerlaw@gmail.com [mailto:richardwarnerlaw@gmail.com] 9

August 14, 2013 10:45 AM **To:** Keith Hall **Subject:** Re: Musga Case

We should see him together next week to discuss it and confront him w
(which is too close to what Angel and I suspected but Jake has denied -
Monday, Tuesday afternoon or Friday morning. RW The Fine Prir

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Please reply to the sender noting that you have received the message in
it. Thank you.

On Aug 14, 2013, at 10:25 AM, Keith Hall <Keith@JimNewtonLaw

I didn't discuss the offer with Jake. I did have them write on the continuance or on results, so it is part of the record.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 98512
office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.com

From: richardwarnerlaw@gmail.com [<mailto:richardwarnerlaw@gmail.com>] 8/13/2013 9:37 PM
To: Angel Lombardo **Cc:** Dave Snyder; Keith Hall **Subject:**

Dave or Angel,
Run a full criminal history check on this snitch ASAP. What is he in court for? We need to get the Pierce County Jail housing records to find out if this guy was in the same pod with Jake when he claims he was.

Dave, have you finished up the detailed timeline yet. There is an "offer" with an 8/30 deadline. It is not much of an offer but the State is threatening a penalty case, but the only alternative is LWOP.

Keith, have you relayed any of this to Jake? Did we get it on the record or any forensics or DNA?

This offer (or its alternative) is a game changer. Just saying. RW

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On Aug 13, 2013, at 4:43 PM, Angel Lombardo <Angel@JimNewtonLaw.com>

APPENDIX L

Dave,

Two tasks to do on Musga:

(1) create a timeline by witness for the second half of March starting when Leah, Lo's father, noticed and photographed a "handprint" on Chayson's thigh through the ER; and two neighbors, the downstairs woman who said she went up to complain about the sto cleaning woman who lived across the hall from Lo and Jake. Anthony, the maintenance may be a good source for what is going on in the building. You will know him because find out if Lo is still working/living there.

Interviews in Pierce County aren't set up by the PAO unless the witness request the D Omnibus is the 13th of August do please get on this as soon as you can.

Hope all's well with you. I haven't seen you in a while but I have seen Jen. Regards, J

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--

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From: Jared Ausserer <jausser@co.pierce.wa.us>

To: "richardwarnerlaw@gmail.com" <richardwarnerlaw@gmail.com>, Keith Hall <keithh@co.pierce.wa.us>

Cc: Angelica Williams <awilli4@co.pierce.wa.us>

Date: August 15, 2013 at 8:40:31 AM PDT

Subject: Musga

I am following up on our OH earlier this week. I have attached the written offer to Mr. Hall to ensure that everyone is on the same page and is fully informed. Musga until August 30, accept the State's offer or we will be amending as it is an offer. The amendment, should he choose not to plead guilty, would include first degree murder. This would carry a lifetime sentence.

Should your client choose to exercise his right to trial we have a motion for a continuance to September 9, along with an omnibus hearing. This was requested because of the defendant's absence on paternity leave from mid December to mid March. At this point, there is no reason that this case cannot be tried in mid November, as set.

Mr. Hall indicated that the defense has been in contact with an expert who medical evidence provided. Once a determination has been made about w intend to endorse an expert please provide his information and any report can assess whether we need our own expert.

Finally, if the matter cannot be resolved we will need to know which witness interview so that we can arrange them. Let me know if there are any questions thank you.

separator.tiff →

Subject: RE: Jake Musga
Date: August 14, 2013 at 4:29:26 PM PDT
From: Angel Lombardo <Angel@JimNewtonLaw.com>
To: <richardwarnerlaw@gmail.com>, Keith Hall <Keith@JimNewtonLaw.com>
Cc: David Snyder <david@davidsnyderpi.com>

No forensic report just the Toxicology report.

Angel Lombardo
James Newton, Attorney at Law, PLLC

-----Original Message-----

From: richardwarnerlaw@gmail.com [mailto:richardwarnerlaw@gmail.com]
Sent: Wednesday, August 14, 2013 3:21 PM
To: Keith Hall
Cc: Angel Lombardo; David Snyder
Subject: Re: Jake Musga

Angel,
Was the new Dx WSPCL forensic reports? DNA? RW

The Fine Print: Confidentiality. This email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and is legally privileged. This email and any attachments are confidential and may also be protected by attorney client privilege, the work product doctrine or other non-disclosure protection. If you believe that it has been sent to you in error, you may not read, print, disclose, copy, store or disseminate the email or attachments or any information in them. Please reply to the sender noting that you have received the message in error and then delete it. Thank you.

On Aug 14, 2013, at 10:26 AM, Keith Hall <Keith@JimNewtonLaw.com> wrote:

APPENDIX M

www.jimnewtonlaw.com

-----Original Message-----

From: Angelica Williams [mailto:awilli4@co.pierce.wa.us]
Sent: Friday, August 23, 2013 1:40 PM
To: Keith Hall; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Jared and I are available at 11:30. Just check in on the 9th floor when you arrive.

Thanks,
Angelica

-----Original Message-----

From: Keith Hall [mailto:Keith@JimNewtonLaw.com]
Sent: Friday, August 23, 2013 1:08 PM
To: Angelica Williams; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Angelica & Jesse:

Richard and I would like to schedule a meeting to discuss this offer with you, on Thursday the 29th. Can we schedule a time to come down and discuss this at your office, sometime after 11:00 am?

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC
610 Central Avenue South
Kent, WA 98032
253.852.6600 office
253.852.6800 fax
keith@jimnewtonlaw.com
www.jimnewtonlaw.com

-----Original Message-----

From: Angelica Williams [mailto:awilli4@co.pierce.wa.us]
Sent: Tuesday, August 20, 2013 9:32 AM
To: 'richardwarnerlaw@gmail.com'; Keith Hall
Subject: Jake Musga

-----Original Message-----

From: Keith Hall [mailto:Keith@JimNewtonLaw.com]
Sent: Thursday, August 29, 2013 3:36 PM
To: Angelica Williams; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Jared & Angelica:

There will be a plea, we talked to our client today and he is in agreement.

Let's try to get a plea date set up, sometime in the next couple of weeks. As we discussed, we can set out sentencing to allow for evaluations and preparation for our mitigation materials.

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC
610 Central Avenue South
Kent, WA 98032
253.852.6600 office
253.852.6800 fax
keith@jimnewtonlaw.com
www.jimnewtonlaw.com

-----Original Message-----

From: Keith Hall
Sent: Friday, August 23, 2013 2:09 PM
To: 'Angelica Williams'; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Sounds good, see you then.

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC
610 Central Avenue South
Kent, WA 98032
253.852.6600 office
253.852.6800 fax
keith@jimnewtonlaw.com

APPENDIX N

Tacoma, WA 98406
253.798.6614

-----Original Message-----

From: Keith Hall [mailto:Keith@JimNewtonLaw.com]
Sent: Thursday, August 29, 2013 3:36 PM
To: Angelica Williams; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Jared & Angelica:

There will be a plea, we talked to our client today and he is in agreement.

Let's try to get a plea date set up, sometime in the next couple of weeks. As we discussed, we can set out sentencing to allow for evaluations and preparation for our mitigation materials.

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC
610 Central Avenue South
Kent, WA 98032
253.852.6600 office
253.852.6800 fax
keith@jimnewtonlaw.com
www.jimnewtonlaw.com

-----Original Message-----

From: Keith Hall
Sent: Friday, August 23, 2013 2:09 PM
To: 'Angelica Williams'; Jared Ausserer
Cc: richardwarnerlaw@gmail.com
Subject: RE: Jake Musga

Sounds good, see you then.

Keith Hall
Attorney at Law

James Newton Attorney at Law, PLLC

APPENDIX O

to you in error, you may not read, print, disclose, copy, store or disseminate attachments or any information in them. Please reply to the sender notifying that you have received the message in error and then delete it. Thank you.

On Aug 29, 2013, at 6:16 PM, Keith Hall <Keith@JimNewtonLaw.com>

I don't see any of it as a significant change, and I think it all fits in with what we will let her know it is a go, unless you tell me otherwise.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 98040
office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.com

From: richardwarnerlaw@gmail.com [<mailto:richardwarnerlaw@gmail.com>] 8/29/2013 5:02 PM **To:** Keith Hall **Cc:** Angel Lombardo **Subject:** Fwd: Jake

That's a bit of a change (still think it doesn't make a difference on whether or not). Do we want to call her on it? RW The Fine Print: Confidentiality covered by the Electronic Communications Privacy Act, 18 USC 2510-2517, is attorney-client privileged. This email and any attachments are confidential and may also be covered by attorney-client privilege, the work product doctrine or other non-disclosure laws. If you believe that it has been sent to you in error, you may not read, print, disclose, copy, store or disseminate the email or attachments or any information in them. Please notify the sender noting that you have received the message in error and then delete it. Thank you.

Begin forwarded message:

From: Angelica Williams <awilli4@co.pierce.wa.us> **Date:** August 29, 2013 1:57 PM PDT **To:** "Keith Hall" <Keith@JimNewtonLaw.com>, Jared Ausser <jausser@co.pierce.wa.us> **Cc:** "richardwarnerlaw@gmail.com" <richardwarnerlaw@gmail.com> **Subject:** RE: Jake Musga

Thank you for letting us know so quickly. In terms of a plea date, my p
set the plea for 9/9 when we already have our motion for pre-assignmer
something arises and the plea does not go through, we can proceed with
assignment. Also, we want to be clear that this is a factual plea to all cl
aggravating circumstances and not an Alford/Newton plea. Please c
date works and I will have it added to the docket and wil circulate the s
order. Thank you, Angelica Williams Deputy Prosecuting

County Prosecutor's Office 930 Tacoma Avenue South, Rm. 946 Ta
98406 253.798.6614 -----Original Message----- From: Kei

[mailto:Keith@JimNewtonLaw.com] Sent: Thursday, August 29, 20
Angelica Williams; Jared Ausserer Cc: richardwarnerlaw@gmail.com

Musga Jared & Angelica: There will be a plea, we talked to ou
is in agreement. Let's try to get a plea date set up, sometime in th

of weeks. As we discussed, we can set out sentencing to allow for c
preparation for our mitigation materials. Keith Hall Attorney at

Newton Attorney at Law, PLLC 610 Central Avenue South Kent, V
253.852.6600 office 253.852.6800 fax keith@jimnewtonlaw.co

www.jimnewtonlaw.com -----Original Message----- From:
Friday, August 23, 2013 2:09 PM To: 'Angelica Williams'; Jared Aus

richardwarnerlaw@gmail.com Subject: RE: Jake Musga Sounds
Keith Hall Attorney at Law James Newton Attorney at Law

Avenue South Kent, WA 98032 253.852.6600 office 253.852.6
keith@jimnewtonlaw.com www.jimnewtonlaw.com -----O

From: Angelica Williams [mailto:awilli4@co.pierce.wa.us] Sent:

APPENDIX P

to you in error, you may not read, print, disclose, copy, store or disseminate attachments or any information in them. Please reply to the sender notifying that you have received the message in error and then delete it. Thank you.

On Aug 29, 2013, at 6:16 PM, Keith Hall <Keith@JimNewtonLaw.com>

I don't see any of it as a significant change, and I think it all fits in with what we will let her know it is a go, unless you tell me otherwise.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 98040
office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.com

From: richardwarnerlaw@gmail.com [<mailto:richardwarnerlaw@gmail.com>] 8/29/2013 5:02 PM **To:** Keith Hall **Cc:** Angel Lombardo **Subject:** Fwd: Jake

That's a bit of a change (still think it doesn't make a difference on whether or not). Do we want to call her on it? RW
The Fine Print: Confidentiality covered by the Electronic Communications Privacy Act, 18 USC 2510-1(b) is privileged. This email and any attachments are confidential and may be subject to attorney client privilege, the work product doctrine or other non-disclosure laws. If you believe that it has been sent to you in error, you may not read, print, disseminate the email or attachments or any information in them. Please notify the sender noting that you have received the message in error and then delete it. Thank you.

Begin forwarded message:

From: Angelica Williams <awilli4@co.pierce.wa.us> **Date:** August 29, 2013 10:00 AM PDT **To:** "Keith Hall" <Keith@JimNewtonLaw.com>, Jared Ausser <jausser@co.pierce.wa.us> **Cc:** "richardwarnerlaw@gmail.com" <richardwarnerlaw@gmail.com> **Subject:** RE: Jake Musga

Thank you for letting us know so quickly. In terms of a plea date, my p
set the plea for 9/9 when we already have our motion for pre-assignmer
something arises and the plea does not go through, we can proceed with
assignment. Also, we want to be clear that this is a factual plea to all cl
aggravating circumstances and not an Alford/Newton plea. Please
date works and I will have it added to the docket and wil circulate the s
order. Thank you, Angelica Williams Deputy Prosecuting

County Prosecutor's Office 930 Tacoma Avenue South, Rm. 946 Ta
98406 253.798.6614 -----Original Message----- From: Kei

[mailto:Keith@JimNewtonLaw.com] Sent: Thursday, August 29, 20
Angelica Williams; Jared Ausserer Cc: richardwarnerlaw@gmail.com

Musga Jared & Angelica: There will be a plea, we talked to ou
is in agreement. Let's try to get a plea date set up, sometime in th
of weeks. As we discussed, we can set out sentencing to allow for e
preparation for our mitigation materials. Keith Hall Attorney at

Newton Attorney at Law, PLLC 610 Central Avenue South Kent, V
253.852.6600 office 253.852.6800 fax keith@jimnewtonlaw.co

www.jimnewtonlaw.com -----Original Message----- From:
Friday, August 23, 2013 2:09 PM To: 'Angelica Williams'; Jared Aus
richardwarnerlaw@gmail.com Subject: RE: Jake Musga Sounds

Keith Hall Attorney at Law James Newton Attorney at Law
Avenue South Kent, WA 98032 253.852.6600 office 253.852.6

keith@jimnewtonlaw.com www.jimnewtonlaw.com -----O
From: Angelica Williams [mailto:awilli4@co.pierce.wa.us] Sent:

APPENDIX Q

29, 2013 6:43 PM **To:** Keith Hall **Subject:** Re: Jake Musga

No exceptional possible without a there being a stipulation (admission) aggravators BRD. The Fine Print: Confidentiality. This email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and is legally privileged. This email and any attachments are confidential and may also be protected by attorney-client privilege, the work product doctrine or other non-disclosure protection. If you have received this email in error, you may not read, print, disclose, copy, store, or disseminate the email or attachments or any information in them. Please reply to the sender if you have received the message in error and then delete it. Thank you.

On Aug 29, 2013, at 6:38 PM, Keith Hall <Keith@JimNewtonLaw.com>

I don't see how they could have gotten an exceptional (above standard range) sentence though, right? They always said they were going to ask for more than the range for aggravators. Obviously we won't plead to what was not in the original information.

I don't see that Angel calendared the 9th, I will have him do so.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 98512
office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.com

From: richardwarnerlaw@gmail.com [<mailto:richardwarnerlaw@gmail.com>]

29, 2013 6:25 PM **To:** Keith Hall **Subject:** Re: Jake Musga

That's okay by me. It just gives them grounds for an exceptional sentence finding it BRD. I don't think we need to respond. What time is court on Monday? Is it on the office calendar or I wasn't invited because it isn't on my calendar?

RW The Fine Print: Confidentiality. This email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and is legally privileged. This email and any attachments are confidential and may also be protected by attorney-client privilege, the work product doctrine or other non-disclosure protection. If you believe you have received this email in error, please reply to the sender and then delete it.

to you in error, you may not read, print, disclose, copy, store or disseminate any attachments or any information in them. Please reply to the sender notifying that you received the message in error and then delete it. Thank you.

On Aug 29, 2013, at 6:16 PM, Keith Hall <Keith@JimNewtonLaw.com>

I don't see any of it as a significant change, and I think it all fits in with what we will let her know it is a go, unless you tell me otherwise.

Keith Hall Attorney at Law

James Newton Attorney at Law, PLLC 610 Central Avenue South Kent, WA 98512
office 253.852.6800 fax keith@jimnewtonlaw.com www.jimnewtonlaw.com

From: richardwarnerlaw@gmail.com [<mailto:richardwarnerlaw@gmail.com>] 8/29/2013 5:02 PM **To:** Keith Hall **Cc:** Angel Lombardo **Subject:** Fwd: Jake

That's a bit of a change (still think it doesn't make a difference on whether or not). Do we want to call her on it? RW
The Fine Print: Confidentiality
This email and any attachments are confidential and may be covered by the Electronic Communications Privacy Act, 18 USC 2510-2517, attorney client privilege, the work product doctrine or other non-disclosure laws. If you believe that it has been sent to you in error, you may not read, print, disclose, disseminate the email or attachments or any information in them. Please notify the sender noting that you have received the message in error and then delete it. Thank you.

Begin forwarded message:

From: Angelica Williams <awilli4@co.pierce.wa.us> **Date:** August 29, 2013 1:50 PM PDT **To:** "Keith Hall" <Keith@JimNewtonLaw.com>, Jared Ausser <jausser@co.pierce.wa.us> **Cc:** "richardwarnerlaw@gmail.com" <richardwarnerlaw@gmail.com> **Subject:** RE: Jake Musga

APPENDIX R

Good Morning - Jared and I wanted to follow up regarding the State's offer in this case. Can you please confirm that you received the email that Jared sent last week on August 15 containing the State's offer?

Given the severity of the current charges as well as those proposed, we want to make sure that our communication is clear and there are no misunderstandings about the way in which the State intends to proceed should we not be able to resolve this case.

If you have any questions please do not hesitate to contact us.

Thank you,

Angelica Williams

Deputy Prosecuting Attorney
Pierce County Prosecutor's Office
930 Tacoma Avenue South, Rm. 946
Tacoma, WA 98406
253.798.6614

separator.tiff -

From: Angelica Williams <awilli4@co.pierce.wa.us>
To: "Keith Hall" <Keith@JimNewtonLaw.com>, Jared Ausserer <jausser@co.pierce.wa.us>
Cc: "richardwarnerlaw@gmail.com" <richardwarnerlaw@gmail.com>
Date: September 3, 2013 at 9:03:29 AM PDT
Subject: RE: Jake Musga

CDPJ will not let me set the plea without plea paperwork completed. Can you please then email it to me so that I can bring it to Court Admin. Once I show them the paperwork

Thanks,
Angelica

APPENDIX S

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	No. 13-1-01369-1
)	
)	
JAKE MUSGA,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 9th day of September, 2013, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

APPEARANCES

On Behalf of Plaintiff(s): ANGELICA WILLIAMS
JARED AUSSERER
Deputy Prosecuting Attorneys

On Behalf of Defendant(s): RICHARD L. WARNER
KEITH R. HALL
Attorneys at Law

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Plea

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1 MS. WILLIAMS: State v. Musga, cause number
2 13-1-01369-1. Angelica Williams and Jared Ausserer on
3 behalf of the State. The defendant is present seated
4 to my right in custody represented by his attorneys,
5 Mr. Richard Warner and Keith Hall.

6 Today is the date set for a plea, Your Honor. I
7 have handed forward to the court two Statements of
8 Defendant on Plea of Guilty for, Count I, Murder in the
9 First Degree; and Count II, Rape of a Child in the
10 First Degree. I would ask the court to accept the
11 defendant's plea of guilty. I would note that there
12 are three aggravating circumstances on Count I and two
13 aggravating circumstances on Count II.

14 THE COURT: I take it that you have gone over this
15 with Mr. Musga?

16 MR. WARNER: We have, Your Honor.

17 THE COURT: In doing so, would you say that you
18 have read the Statement of Defendant on Plea of Guilty
19 to him or that he has read it himself?

20 MR. WARNER: That would be both. Yes to both.
21 Yes, he read both of them. We read them with him, and
22 we reviewed and answered his questions, Your Honor.

23 THE COURT: Is it your view that he is proceeding
24 knowingly, intelligently, and voluntarily to plead
25 guilty to the charges in the original Information on

1 each of these cause numbers?

2 MR. WARNER: Yes, Your Honor.

3 THE COURT: Sir, is your name Jake Joseph Musga?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Musga, do you read and write the
6 English language?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you gone over these two
9 Statements of Defendant on Plea of Guilty with your
10 counsel?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you feel like you understand the
13 documents?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions about either
16 one of them?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Even though there is only one cause
19 number, I have two Statements of Defendant on Plea of
20 Guilty?

21 MS. WILLIAMS: Yes, Your Honor. One of the
22 Statement of Defendant on Plea of Guilty is specific to
23 a sex offense.

24 THE COURT: Is what?

25 MS. WILLIAMS: The sex offense Statement of

1 Defendant on Plea of Guilty. We thought it would be
2 more prudent to separate them out.

3 THE COURT: So, you understand then that you are
4 charged in Count I with the crime of Murder in the
5 First Degree. This has a maximum penalty of life in
6 prison and a 50,000-dollar fine. A standard range
7 sentence in your case of 261 to 347 months with
8 community custody of three years. Do you understand
9 that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: In Count II, you are charged with the
12 crime of Rape of a Child in the First Degree. This has
13 a maximum penalty of life in prison and a 50,000-dollar
14 fine. A standard range sentence to 111 to 147 months.
15 Because this is part of the Indeterminate Sentence
16 Review Board offenses, it's a matter in which you could
17 conceivably be held in custody for life.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Paragraph 4(b) of each of the
20 Statement of Defendant on Plea of Guilty, it indicates
21 the elements of these charges as set forth in the
22 original Information. The elements of any crime are
23 the things that the State has to prove in order to
24 convict you of that crime. Do you understand what the
25 State would have to prove in order to convict you of

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each of these two crimes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: At Paragraph 5 of the Statements of Defendant on Plea of Guilty, it sets forth various important rights that you give up when you agree to plea guilty. Do you understand each and every one of these rights that you are giving up?

THE DEFENDANT: Yes, Your Honor.

THE COURT: At Paragraph 11, there is a statement on each of these documents. Are these your statements to me as to what you did to get yourself in trouble in these cases?

THE DEFENDANT: Yes, they are, Your Honor.

THE COURT: Are these your initials in the margin?

THE DEFENDANT: Yes, sir.

THE COURT: The other one right over here?

THE DEFENDANT: Yes, sir.

THE COURT: At Paragraph 12, are these your signatures on these documents?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Right here and right here.

THE DEFENDANT: Yes, they are, Your Honor.

THE COURT: Mr. Musga, has anyone made any threats or promises to you in order to force you or induce you to plea guilty here other than what the State may have

1 agreed to do or to recommend?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you know that the court, whether
4 it's me or another judge, does not have to follow the
5 sentencing recommendations of either the State or the
6 defense when determining your sentence?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that upon a
9 conviction in either one of those matters that you may
10 no longer own, possess, or have under your control any
11 firearm?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that if you are not
14 a United States citizen, your ability to remain in this
15 country or to become a naturalized U.S. citizen would
16 be impaired by a conviction on these matters?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that each of these
19 offenses is a most serious offense or a strike offense?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: I noticed on the rape charge that it
22 has a check next to it. It looks like you checked
23 that, so you understand that, right? Or, your counsel
24 has. It wasn't checked on the one with respect to
25 murder. Do you understand that that does apply to you.

1 This is also a strike offense?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand that on the
4 conviction on the rape offense that you are required to
5 adhere to the registration requirements should you be
6 released?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: To the charge of Murder in the First
9 Degree as set forth in Count I of the original
10 Information, what is your plea: Guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: To the charge of Rape of a Child in
13 the First Degree as set forth in the Count II of the
14 original Information, what is your plea: Guilty or not
15 guilty?

16 THE DEFENDANT: Guilty, Your Honor.

17 THE COURT: Pleas of guilty will being entered.
18 The court finds that there is a factual basis for the
19 plea, that the defendant understands the nature of the
20 charge and the consequences of the plea, and that it is
21 a knowing, voluntary, and intelligent plea. The court
22 finds all of that as to each count.

23 MS. WILLIAMS: Your Honor, the State is handing
24 forward conditions of release with a mandatory no bail
25 hold.

1 The parties are asking that sentencing in matter
2 be set out quite a ways to mid-November. Defense would
3 like to present some mitigation material as this is an
4 open recommendation, and the State will be seeking an
5 exceptional sentence. I also anticipate that the
6 sentencing itself will be rather lengthy, Your Honor.

7 THE COURT: Because of the nature of the offense,
8 this is one this court has to hear. It will be in
9 CDPJ. Sometimes, it is difficult to have a lengthy
10 sentencing in here. We may have to get coverage or
11 handle it some other way.

12 What day do you all want to do this?

13 MR. WARNER: Perhaps the week of November 18th at
14 the court's convenience.

15 THE COURT: I will say Thursday, November 21, at
16 1:30.

17 Indeed, under at least the rape charge, this is a
18 no bail hold. Everybody has signed that including
19 Mr. Musga. I have signed the new Order Establishing
20 Conditions of Release.

21 MS. WILLIAMS: Your Honor, I will interlineate on
22 the scheduling order that the defendant waives his
23 right to speedy sentencing.

24 MR. WARNER: No objection, Your Honor. Agreed.

25 At some point, Your Honor, we will be

1 presenting -- at some point, we are going to present
2 an order, hopefully, agreed to allow an expert into the
3 jail to evaluate Mr. Musga.

4 THE COURT: That is not uncommon. Certainly, we
5 should be able to accommodate that.

6 MS. WILLIAMS: Your Honor, we also need an order
7 for a presentence investigation given the Rape Child 1
8 charge. We will sign that off the record and hand it
9 forward.

10 MR. WARNER: Agreed.

11 THE COURT: Okay.

12 (Proceedings Concluded.)

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*****CERTIFICATE*****

I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, September 9th, 2013, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 22nd day of September 2014.

KATRINA A. SMITH/SM-IT-HK-302N9

APPENDIX T



STATE OF WASHINGTON
WASHINGTON STATE PATROL

2502 112th Street East, Rm 273 • Tacoma, WA 98445-5104 • (253) 538-3207 • www.wsp.wa.gov

CRIME LABORATORY REPORT

AGENCY: Tacoma Police Department
OFFICER: Det. Louise Nist
VICTIM: Colley, Chayson T.
SUSPECT: Musga, Jake Joseph

LABORATORY NO.: 313-000875
AGENCY NO.: 13-089-0189
REQUEST NO.: 0001, 0002

Items Examined

- Item MC1: One diaper
 - Item MC4: One light blue knit blanket with stars
 - Item MC17: One "Kirkland" brand baby wipes container
 - Item MC20: A bag containing six diapers, 1 child's sock, and numerous wipes and napkins
 - Item MC28 - MC31: Sections of beige carpet
 - Item MC32: One pair of silver "Nike" basketball style shorts, size "XL"
 - Item MC41: One swab, reported to be sample from the "bathroom counter"
 - Item MC52: A reference sample reported to be from Chayson Colley
 - Item MC54: Two swabs reported to be an anal sample collected from Chayson Colley
 - Item MC55: Two swabs reported to be an oral sample collected from Chayson Colley
- Item #56 was not examined for this report*

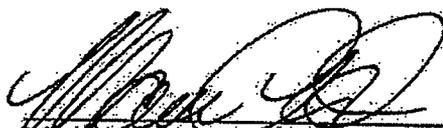
Examination Procedures and Results

Item MC1: Red/brown staining observed on the inside of the diaper was tested with phenolphthalein (PHT), a chemical test for indications of blood, with a positive result. The interior surface of the diaper was tested for acid phosphatase (AP), a substance found in high amounts in semen and lower amounts in some other body fluids, with negative results. Portions of the red/brown stained areas were removed and examined for spermatozoa and p30 (a protein found in semen). No spermatozoa heads or p30 were detected. No further testing was performed on this item.

Item MC4: A forensic light source (FLS) was used to supplement visual examination of the blanket. FLS is an instrument which delivers a high intensity light of adjustable wavelength. Different types of physical evidence, such as semen or fibers, may fluoresce (glow) during exposure to this light. Areas of fluorescence were tested for AP, with negative results. Multiple brown, yellow, and red/brown stains were observed on the blanket. The largest red/brown stain was tested with PHT, with a positive result. A portion of this stain was removed and extracted for DNA content.

Item MC17: Red/brown stains observed on the top and bottom of the wipes container were tested with PHT, with positive results. A portion of one stain area from the exterior top of the container was removed and extracted for DNA content.

Item MC20: The diapers (quantity 6) from this item were arbitrarily labeled #1-6 for ease of examination. Light red staining observed on the exterior of diaper #1 was tested with PHT, with a positive result. A brown substance was observed on the inside of the diaper, but no blood-like staining was observed. No further testing was performed on this diaper.


Marion M. Clark, Forensic Scientist

10/1/13
Date

13-089-0189



AGENCY: Tacoma Police Department
OFFICER: Det. Louise Nist
VICTIM: Colley, Chayson T.
SUSPECT: Musga, Jake Joseph

LABORATORY NO.: 313-000875
AGENCY NO.: 13-089-0189
REQUEST NO.: 0001, 0002

Red/brown staining was observed on the inside of diapers #2-5. Stains from each diaper were tested with PHT, with positive results. The interior of each diaper #2-5 was tested for AP, with negative results. No further testing was performed on these diapers.

Faint red staining observed on the inside of diaper #6 was tested with PHT, with a positive result. The inside of the diaper was tested for AP, with a weak positive result obtained from approximately the center of the absorbent area. A portion of the AP positive area was removed and examined for spermatozoa and p30. No spermatozoa heads or p30 were detected. No further testing was performed on this item.

Numerous stained wipes and napkins, and one stained child's sock were contained in item MC20. Red/brown stains from one napkin and the child's sock were tested with PHT, with positive results. No further testing was performed on these items.

Apparent hairs were collected from inside diapers #1, #3, and #4 and were repackaged with item MC20.

Items MC28-31: Red or Red/brown stains were observed on the carpet sections. At least one stain from each item was tested with PHT, with positive results. A portion of one stain from each carpet section was removed and extracted for DNA content.

Item MC32: Red/brown stains observed on the front waistband, front crotch area, and rear seat area were tested with PHT, with positive results. A faint brown stain on the interior rear seam was tested with PHT, with a negative result. A portion of the stain from the waistband was removed and extracted for DNA content. Additionally, the interior waistband and ties were swabbed in an attempt to collect cellular material from the wearer. This sample was also extracted for DNA content.

Item MC41: Red/brown staining on the swab was tested with PHT, with a positive result. A portion of this staining was removed and extracted for DNA content.

Item MC54: Red staining was observed on the anal swabs. One swab was tested with PHT, with a positive result. A portion of each swab was removed, combined, examined for spermatozoa and p30. No spermatozoa heads or p30 were detected. No further testing was performed on this item.

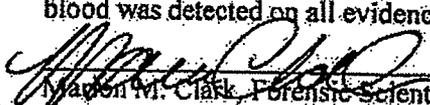
Item MC55: Light orange staining was observed on the oral swabs. One swab was tested with PHT, with a positive result. A portion of each swab was removed, combined, examined for spermatozoa and p30. No spermatozoa heads or p30 were detected. No further testing was performed on this item.

DNA was also extracted from the reference sample of Chayson Colley (MC52) for comparison purposes.

The extracted samples were quantified for human DNA levels. Samples were amplified by the PCR (polymerase chain reaction) process using the Applied Biosystems AmpFESTR® Identifier® Plus amplification kit. The resulting amplified STR (short tandem repeat) DNA products were analyzed using an Applied Biosystems 3130 Genetic Analyzer.

Conclusions/Interpretations

No semen was detected on the anal swabs (MC54), oral swabs (MC55), or diapers (MC1 and MC20 #6). No indications of semen were detected on the blanket (MC4) or diapers (MC20 #1-5). Staining consistent with blood was detected on all evidence items examined for this report.


Markon M. Clark, Forensic Scientist

10/1/13
Date

AGENCY: Tacoma Police Department
OFFICER: Det. Louise Nist
VICTIM: Colley, Chayson T.
SUSPECT: Musga, Jake Joseph

LABORATORY NO.: 313-000875
AGENCY NO.: 13-089-0189
REQUEST NO.: 0001, 0002

13-089-0189

A partial male DNA typing profile matching that of Chayson Colley, at the sites examined, was obtained from the blanket (MC4). The estimated probability of selecting an unrelated individual at random from the U.S. population with a matching profile is 1 in 11 quadrillion.

Single source male DNA typing profiles matching that of Chayson Colley were obtained from the wipes container (MC17), carpet section MC28, carpet section MC29, the stain from the waistband of the shorts (MC32), and the bathroom counter swab (MC41). The estimated probability of selecting an unrelated individual at random from the U.S. population with a matching profile is 1 in 49 quintillion.

The DNA typing profiles obtained from carpet sections MC30 and MC31 are consistent with having originated from a major contributor matching that of Chayson Colley, and a trace contributor. The estimated probability of selecting an unrelated individual at random from the U.S. population with a matching profile (major contributor) is 1 in 49 quintillion. No comparisons can be made to the trace components of these mixtures.

The DNA typing profile obtained from the interior waistband/ties of the shorts (MC32) is a mixture consistent with having originated from at least three contributors, with a major female contributor, and at least two minor/trace contributors (with at least one male component). No interpretation or statistical analysis was attempted for this mixture at this time, but may be possible in the future if additional reference samples are provided.

Disposition

The DNA extract from the interior waistband/ties of the shorts (MC32) was consumed in this testing. Items MC4, 17, 28, 29, 30, 31, 32, and 41 contain DNA work product generated during this analysis. The evidence was returned to the evidence vault pending return to the submitting agency.

Remarks

1. AmpFISTR® Identifiler® Plus kit sites examined: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, Amelogenin (a sex determination site), D5S818 and FGA. A threshold of 150 Relative Fluorescence Units (RFU) and above is used for inclusionary purposes. Data at 35 RFU and above may be considered for exclusionary purposes.

2. Statistical calculations were computed by CODIS Popstats using frequency data compiled by the FBI and published in the *Journal of Forensic Sciences* 46 (3) (2001) 453-489 and *Forensic Science Communications* 3 (3) (2001) (for D2S1338 and D19S433).

3. Glossary of terms:

DNA (deoxyribonucleic acid): Genetic material found in all nucleated cells of the body.

PCR (polymerase chain reaction): A process used to make many copies of short target segments of DNA, which subsequently can be typed.

STR (short tandem repeat): Short segments of DNA, of a particular sequence, which are repeated a variable number of times. STR's are differentiated and categorized based on size.

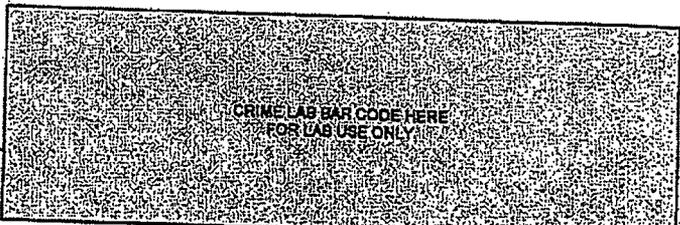


Marion M. Clark, Forensic Scientist

10/1/13
Date

WASHINGTON STATE PATROL - CRIME LABORATORY REQUEST FOR LABORATORY EXAMINATION

http://www.wsp.wa.gov/forensics/docs/bureau/forensic_services_guide.pdf



PRIMARY AGENCY CASE NUMBER 13-089-0189	RELATED AGENCY CASE NUMBER(S)
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HAS OTHER EVIDENCE IN THIS CASE BEEN PREVIOUSLY SUBMITTED TO A WSP CRIME LAB? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	OFFENSE Murder-1 / Rape of a Child-f	DATE OF OFFENSE 03/30/13
SUSPECT(S) - LAST, FIRST, MI (SID #, if available)	DOB	VICTIM(S) - LAST, FIRST, MI
1 Musga, Jake Joseph WA26750183	03/05/94	1 Colley, Chayson T.
2		2
3		3
4		4

INVESTIGATING OFFICER/DETECTIVE (Can be different from submitter)	<input type="checkbox"/> RUSH	COURT DATE
NAME (TYPE OR PRINT) (LAST NAME, FIRST NAME) Nist, Louise	RANK/POSITION Det	BADGE # 241
E-MAIL ADDRESS(ES) lnist@cityoftacoma.org	SIGNATURE <i>Louise Nist</i>	DATE 07/16/13
AGENCY Tacoma PD	STREET ADDRESS 3701 S. Pine	CITY Tacoma
		ZIP CODE 98409
	PHONE 253-594-7839	EXTENSION

EVIDENCE ITEM # (Prioritized)	ITEM DESCRIPTION	EXAM CODES	SPECIAL INSTRUCTIONS
MC-1 ^L	Diaper from hospital		MC-1 & MC-20 (diapers) - Fluid ID & compare DNA to MC-52 (previously submitted).
MC-20 ^L	Diapers & wipes		
MC-17 ^L	Baby wipe container with reddish stain		MC-1 & MC-20 - determine presence of semen
MC-32 ^L	Shorts with reddish stains		
MC-41 ^L	Swab from bathroom counter stain		
MC-4 ^L	Blanket with stains from tub		
MC-28 thru 3 ^L	Carpet pieces (4) with reddish stains		(MC-17, MC-32, MC-41, MC-4, MC-28-31) - Stain ID & compare DNA to MC-52 listed above
1			
1			
1			

FOR LAB USE ONLY

SUBMITTED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME
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SUBMITTAL METHOD	TRACKING NUMBER
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RECEIVED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME
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FOR LAB USE ONLY	Evidence Item #	TRANSFERRED BY	TO	VIA	DATE-TIME	RECEIVED BY	DATE-TIME
	TRACKING NO:						
	TRACKING NO:						
	TRACKING NO:						

Item(s) being released:			
RELEASED TO: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

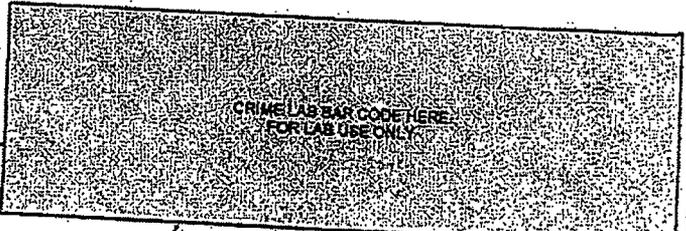
RELEASE METHOD	TRACKING NUMBER
<input type="checkbox"/> IN PERSON <input type="checkbox"/> UPS <input type="checkbox"/> FED EX <input type="checkbox"/> U.S. CERT. MAIL <input type="checkbox"/> U.S. REG. MAIL <input type="checkbox"/> CAMPUS MAIL	

RELEASED BY: (PRINT NAME—LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME
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13-089-0189

WASHINGTON STATE PATROL - CRIME LABORATORY
REQUEST FOR LABORATORY EXAMINATION

http://www.wsp.wa.gov/forensics/docs/bureau/forensic_services_guide.pdf



100890189

PRIMARY AGENCY CASE NUMBER 13-089-0189		RELATED AGENCY CASE NUMBER(S)	
HAS OTHER EVIDENCE IN THIS CASE BEEN PREVIOUSLY SUBMITTED TO A WSP CRIME LAB? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		OFFENSE MURDER-1° / RAPE OF A CHILD-1°	DATE OF OFFENSE 3-30-13
SUSPECT(S) - LAST, FIRST, MI (SID #, if available)	DOB	VICTIM(S) - LAST, FIRST, MI	DOB
MUSGA, JAKE JOSEPH WA 26750183	3-5-74	COLLEY, CHAYSON T.	3-5-11

INVESTIGATING OFFICER/DETECTIVE (Can be different from submitter)		<input type="checkbox"/> RUSH	COURT DATE 9-17-13
NAME (TYPE OR PRINT) (LAST NAME, FIRST NAME) NEST, LOUISE	RANK/POSITION DET	BADGE # 241	SIGNATURE <i>[Signature]</i>
E-MAIL ADDRESS(ES) lnest@cityoftacoma.org	PHONE 253-594-7839	EXTENSION 5-23-13	
AGENCY TACOMA	STREET ADDRESS 3701 S. PENE	CITY TACOMA	ZIP CODE 98409

EVIDENCE ITEM # (Print/Read)	ITEM DESCRIPTION	EXAM CODES	SPECIAL INSTRUCTIONS
MC-52	BLOOD SPOT CARD - CHAYSON COLLEY	DNA	DEVELOP DNA PROFILE
MC-54	ORAL SWAB		(1) ATTEMPT TO DEVELOP DNA PROFILE (2) COMPARE TO MC-52
MC-55	ORAL SWAB		
MC-56	ORAL & ANAL SMETALS		

FOR LAB USE ONLY

SUBMITTED BY: (PRINT NAME - LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

SUBMITTAL METHOD	TRACKING NUMBER

RECEIVED BY: (PRINT NAME - LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

Evidence Item #	TRANSFERRED BY	TO	VIA	DATE-TIME	RECEIVED BY	DATE-TIME

item(s) being released:

RELEASED TO: (PRINT NAME - LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME

RELEASE METHOD	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> UPS	<input type="checkbox"/> FED EX	<input type="checkbox"/> U.S. CERT. MAIL	TRACKING NUMBER
	<input type="checkbox"/> U.S. REG. MAIL	<input type="checkbox"/> CAMPUS MAIL			
RELEASED BY: (PRINT NAME - LAST NAME, FIRST NAME)	SIGNATURE	DATE	TIME		

APPENDIX U

them today so we will have sufficient time to review the materials prior to Thursday.

Thank you,

Angelica Williams

Pierce County Prosecutor's Office
Special Assault Unit
930 Tacoma Ave. S Rm. 946, Tacoma WA, 98406
253-798-6614
awilli4@co.pierce.wa.us

-----Original Message-----

From: richardwarnerlaw
[mailto:richardwarnerlaw@gmail.com]
Sent: Tuesday, November 05, 2013 4:01 PM
To: Angelica Williams
Cc: Jared Ausserer; Keith Hall; Angel Lombardo
Subject: Re: Jake Musga

Good afternoon Angelica.
When I forwarded the DNA results to our expert this morning, he emailed me back saying he was "writing it right now" and expects to have it completed shortly. As soon as it's done, we will, of course, forward it along to you. We don't see any problems that would keep us from proceeding on the 21st. DOC is meeting with Jake this week for the PSR.
Regards, RW

On Nov 5, 2013, at 2:07 PM, Angelica Williams
<awilli4@co.pierce.wa.us>
wrote:

Good Afternoon,

We wanted to touch base on the Musga sentencing set for Nov. 21. You had mentioned you were going to be gathering various

evaluations to
present at sentencing - we will need to have time to review
the
materials in advance of sentencing. When do you think you
will have the
material ready? Is Nov. 21 still a good date for sentencing?

Thank you,

Angelica Williams

Pierce County Prosecutor's Office
Special Assault Unit
930 Tacoma Ave. S Rm. 946, Tacoma WA, 98406
253-798-6614
awilli4@co.pierce.wa.us

separator.tiff -

From: Jared Ausserer <jausser@co.pierce.wa.us>
To: "Keith Hall" <Keith@NewtonandHall.com>, Angelica
Williams <awilli4@co.pierce.wa.us>, richardwarnerlaw
<richardwarnerlaw@gmail.com>
Cc: Angel Lombardo <Angel@NewtonandHall.com>
Date: November 19, 2013 at 8:31:56 AM PST
Subject: RE: Jake Musga

We have not been provided any materials. Please provide,
thanks.

-----Original Message-----

From: Keith Hall [mailto:Keith@NewtonandHall.com]
Sent: Monday, November 18, 2013 7:26 PM
To: Angelica Williams; richardwarnerlaw
Cc: Jared Ausserer; Angel Lombardo

APPENDIX V

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

JAKE JOSEPH MUSGA,

Petitioner,

vs

STATE OF WASHINGTON,

Respondent.

NO. _____

COURT OF APPEALS DIVISION II
DECLARATION OF PATRICK PITT
PERSONAL RESTRAINT PETITION

1. I, Patrick Pitt, am over the age of 18 and am competent to make this declaration.

2. I am a licensed Principal Investigator, in the State of Washington and the review Investigator in the above matter.

3. I am a former Senior British Police Officer, having served for 31 years, retiring with the rank of Chief Superintendent. During the course of my Police career I held operational detective ranks to the US police equivalent of Captain and thereafter two senior command ranks to the point of my retirement.

4. For the past three years I have specialized as a Criminal Defense investigator and have acted as the defense investigator in Homicide and other serious criminal cases. I have been engaged to review the above matter from the perspective of an experienced criminal investigator for the purpose of determining whether an effective investigation plan was formulated and carried out under the auspices of Attorneys Richard Warner and Keith Hall who represented Mr. Musga in the related proceedings.

DECLARATION OF PATRICK PITT

LAW OFFICES OF BARBARA COREY, PLLC
902 South 10th Street
Tacoma, WA 98405
253.779.0844

1 5. I have not at any time met either of the two Attorneys named above or had any
2 contact with them, either from a professional or personal aspect.

3 My review is based on:

- 4 A. Case file provided by Mr. Hall (which includes discovery and related Court
5 documents)
6 B. A data Disk provided by Mr. Warner
7 C. Police Incident Reports produced by South Sound 911, as the result of a
8 disclosure request

9 6. The following items were requested from Attorney's Hall and Warner, by virtue
10 of Information Release Requests signed by Mr. Musga and forwarded to the parties by
11 Attorney Barbara Corey by certified mail.

12 7. I was a party to this request in that the certain of the information requirements
13 for my review were contained therein and had been formulated by me.

14 For the information of the Court I set out below the items requested from each of the parties:

- 15 · Copies of all notes, letters, e-mails in connection with interviews or
16 communications with Jake Musga, Janet Musga, or other Musga family members;
- 17 · Copies of all reports prepared, or written advice tendered in the above matter,
18 whether in electronic format or otherwise;
- 19 · Copies of all correspondence and notes relating to verbal or written communication
20 with any experts or third party in relation to the above case whether in electronic format
21 or otherwise;
- 22 · Copies of all correspondence to and from the Pierce County Prosecuting Attorney's
23 whether in electronic format or otherwise;
- 24 · Copies of all notes relating to conversations or meetings with the Pierce County
25 Prosecuting Attorney's whether in electronic format or otherwise;
- Copies of all correspondence with any Washington State Agency, whether in
electronic format or otherwise;

1 8. To my knowledge as of the date of this declaration no response has been
2 received from Mr. Hall and a limited response was received from Mr. Warner in the form of a
3 disk containing multiple E mails.

4 9. Mr. Hall had previously provided the case discovery file.

5 10. The items not provided by either Mr. Hall or Mr. Warner at the date of this
6 declaration include *inter alia*:

- 7 I. Notes of client interviews
- 8 II. Notes of interviews with the prosecutor
- 9 III. Notes of any witness interviews carried out
- 9 IV. Notes of case discussions between the Attorneys of record or other parties

10 11. To the extent that the requested documents have not been provided my enquiries
11 are incomplete, however sufficient documentation does exist to determine whether an effective
12 defense investigation into the matter was undertaken.

13 12. In addition to reviewing the discovery, the formal court documentation, and the
14 E mails provided by Mr. Warner, I was also provided with copies of text messages between Mr.
15 Musga's mother (Janet Musga) and Mr. Warner together with some E mails between Janet
16 Musga and Mr. Hall.

17 13. Separate discovery requests to the agencies involved resulted in the disclosure
18 of:

- 19 a. Police Incident Reports
- 20 b. Provision of Pierce County Jail professional visit records for Mr. Musga for the duration
 of his incarceration

21 14. The following interviews took place:

- 22 I. Jake Musga
- 23 II. Janet Musga (Mother)
- 24 III. Michael Musga (Father)

1 15. The defense in this matter was privately funded in the amount of \$105k with
2 additional provision of \$30k for experts, which was stated to include the services of a private
3 investigator.

4 16. From my examination of the case papers and the additional information
5 provided by Mr. Musga's family, it is clear that an appropriately qualified and competent
6 defense investigator was not appointed to assist in Mr. Musga's defense. The sum of money set
7 aside to fund the investigator having been returned to Janet Musga by the representing Attorney
8 intact.

9 17. In Mr. Warner's disclosed E mails with the Prosecutor an investigator named
10 David Snyder was named as a corresponding party. The exact extent of Mr. Snyder's
11 involvement in the matter is not shown in the papers provided and reviewed. However the
12 production of a case 'timeline' by Mr. Snyder is referenced. During my review of the case file
13 provided by Mr. Hall I located a copy of a 'timeline' which I produce as Exhibit (1).

14 18. From the materials provided the compilation of a 'timeline' appears to be the
15 sole activity conducted by a defense private investigator, notwithstanding the fact that ample
16 funding was provided to support the preparation of an investigation plan for agreement with the
17 client, and the consequent enquiries interviews and other activities which would flow
18 therefrom.

19 19. Neither Jake Musga, Janet Musga or Michael Musga were aware of Mr.
20 Snyder's involvement and there is no evidence in the case papers that Mr. Snyder's activities
21 extended to an orderly and productive investigation of the prosecution case. From my
22 experience in undertaking criminal defense investigations and by a review of the
23 documentation provided, it is clear that substantial investigative effort was required in this
24 matter.

25
DECLARATION OF PATRICK PITT

LAW OFFICES OF BARBARA COREY, PLLC
902 South 10th Street
Tacoma, WA 98405
253.779.0844

1 20. The level of potential investigative effort involved would be estimated to be in
2 excess of 100 hours.

3 21. Examination of the Materials received failed to show evidence that any ‘Defense
4 Expert’ review of the State’s DNA result took place.

5 22. There was no letter, report, briefing notes, conversation notes or correspondence
6 present concerning this activity.

7 23. In addition to the absence of any reference to a defense DNA expert there is
8 nothing in the documents provided to indicate that the following parties were briefed for the
9 defense:

- 10 I. Scene Forensic experts
- 11 II. Reconstruction expert
- 12 III. Trace evidence forensic expert

13 24. The normal process of requesting the Bench notes from the Forensic laboratory
14 utilized by the Prosecution was not initiated, nor was any expert briefed to review the
15 Prosecution’s forensic scene work or examine in detail the forensic items taken from the scene.
16 There is no evidence that the continuity of the items recovered from the scene was tested by
17 physical examination of the exhibit seals and continuity records. In basic terms forensic
18 evidence arising from the alleged crime scene in this matter was not tested in a manner that the
19 magnitude of this particular case would demand. Examination of the materials further indicates
20 no prosecution witnesses were interviewed. The matter did not reach the stage where the
21 prosecution were required to produce a formal witness list.

22 25. However, a comprehensive list of key witnesses was capable of compilation
23 from the prosecution discovery which was detailed and precise.

24 26. There was no indication that such a list was compiled or that any structured
25 interview plan was formulated.

1 27. The discovery papers therefore indicate that no principal witnesses were
2 interviewed including (but not exclusive to):

- 3 a) The first responders
- 4 b) Key personnel from the investigation team
- 5 c) The Medical Examiner
- 6 d) Washington State Laboratory Forensic Scientist
- 7 e) On scene forensic personnel
- 8 f) Interviewing officers
- 9 g) Laura Colley (decedents Mother)
- 10 h) Family Members of both Mr. Musga and Ms. Colley
- 11 i) Scene residents
- 12 j) Medical Personnel
- 13 k) On Scene witness Ricky Saldavia

14 28. The Autopsy report clearly indicated that there was evidence of pre-existing
15 injuries suffered by the decedent and text messages to Mr. Hall produced by Janet Musga show
16 that an image was made available to the Attorneys demonstrating that injuries were present on
17 the decedent prior to the incident which resulted in his death. The Prosecution discovery
18 contains references to historical injuries sustained by the decedent, prior to Mr. Musga entering
19 into a relationship with Laura Colley, but these were not followed up by the defense team, via
20 interviews with the decedents mother Laura Colley and other members of either her family or
21 that of Mr. Musga.

22 29. There is no reference in the materials provided of any formal request to make
23 witnesses available for interview in particular Laura Colley. There is no evidence that the
24 defense team undertook any investigative action to confirm precisely where Laura Colley was
25 during time of the alleged incident.

 30. It was noted that a jail inmate provided information concerning Mr. Musga and
gave details of conversations which were alleged to have taken place.

1 31. The Police Reports provided identify this person as one James Herness, who to
2 my knowledge of another case, has provided Jail derived information on at least one other
3 defendant in a non-related case.

4 32. No enquiries were made as to the back ground of Herness or his record of
5 providing information on fellow inmates. Nor was he interviewed to test the validity of his
6 statements to the Police.

7 33. In addition to the appointment of a competent and suitably qualified investigator
8 of 'fact' the scope and magnitude of this case would also require the appointment of an
9 experienced and competent 'mitigation' investigator. On the materials provided, and the facts
10 as subsequently determined, no mitigation investigator was appointed.

11 34. During the course of the review I received information from the Pierce County
12 jail concerning professional visits made by Mr. Hall and Mr. Warner, or any other professional
13 party to Mr. Musga whilst he was incarcerated at that location. A schedule was prepared from
14 this documentation which demonstrated the amount of time spent with the Mr. Musga by Mr.
15 Hall and Mr. Warner either separately or together. A summary is set out below:

No.	Attorney (s)	Total Time
1	Keith Hall	220 minutes / 3 hours 40 minutes
2	Richard Warner	1055 minutes / 17 hours 35 minutes
3	Keith Hall / Richard Warner (together)	465 minutes / 7 hours 45 minutes
	TOTAL	1740 minutes / 29 hours

21
22 The schedule prepared is produced as Exhibit 2. It should be noted that these times include
23 booking in, jail transit and interview room waiting time (if any).

24 35. The conclusion reached as a result of my review is that:

- 25 a. Comprehensive discovery was provided by the prosecution to the Attorneys

DECLARATION OF PATRICK PITT

LAW OFFICES OF BARBARA COREY, PLLC
902 South 10th Street
Tacoma, WA 98405
253.779.0844

- 1 b. Pertinent information was provided Mr. Musga's mother to the Attorney's
2 c. A number of key investigative and mitigative elements were present
3 d. No structured investigation strategy was prepared
4 e. No structured interview strategy was prepared
5 f. No significant witness interview activity was undertaken
6 g. The forensic elements of the case were not investigated and tested
7 h. No adequate defense investigation, conducted by a suitably experienced and competent
investigator took place
8 i. No mitigation investigation was conducted by a suitably experienced and competent
mitigation investigator

8 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.
9 SIGNED AT GIG HARBOR, WASHINGTON. THIS 18TH DAY OF NOVEMBER, 2014.

10 
11 _____
PATRICK PITT

EXHIBIT 1

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAKE JOSEPH MUSGA,

Plaintiff,

vs.

STATE OF WASHINGTON,

Defendant.

NO.

DECLARATION OF KIM REDFORD

KIM REDFORD, declares and states as follows:

The attached Exhibit 1 is a true and correct copy of the exhibit with one minor exception. Pursuant to General Order 2011-1 I redacted the minor child's name and said redaction is reflected as "CC".

SIGNED this 19th day of November, 2014.


KIM REDFORD, Legal Assistant

Timeline:

Red = Records of phone calls where times are certain

Blue = What Musga orally reported in his statement to police

Green = What Colley orally reported in her statement to police

Some notes:

Calls *received* means someone called Musga and he actually picked up the phone and there was a conversation.

Calls *placed* could mean one of two things: 1, Musga placed call, recipient answered, and there was a conversation. Or 2, Musga placed call, recipient did not answer, but Musga left a voice-mail message.

Begin timeline March 29, 2013, when Laura leaves

1800-1830:	Per Musga statement (bates 255), Leah picks up Laura
1830-1900	Per Musga statement (bates 255), he plays with <i>CC</i> at park for about a half hour
1900	Per Musga statement (256), he gets back to the house from the park with <i>CC</i>
?	Make food for <i>CC</i> Take a shower with Chayson. Watch more movies. Get ready for bed. (256)
2004	<i>Musga receives and answers</i> call from Leah's phone (360-470-3043) which lasts 1 minute, 21 sec.
2009	<i>Musga places</i> a call to Leah's phone (360-470-3043) which lasts 6 minutes, 42 sec.
2018	<i>Musga places</i> a call to unknown number (253-983-6785) which lasts 1 minute.

2021 *Musga receives and answers call from Leah's phone (360-470-3043) which lasts 3 minutes, 31 sec.*

2025 *Musga places a call to Laura's mom's phone (360-581-5053) which lasts 54 sec.*

2044 *Musga receives and answers call from "Janine" which lasts 6 minutes, 10 sec.*

2053 *Musga receives and answers call from Laura's mom's phone (360-581-5053) which lasts 3 minutes, 28 sec.*

2057 *Musga places a call to "Jessi" (509-869-1045) which lasts 1 minute, 10 sec.*

2100 or 2130 *Per Colley statement, she called Musga (bates 322)*

2200 *Per Musga statement (bates 256), he put ^{CC} in bed at 2200.*

2201 *Musga receives and answers call from Laura's mom's phone (360-581-5053) which lasts 0 minutes, 0 sec (possibly meaning that Musga immediately hung up or the call was disconnected?)*

2230 or 2300 *Per Colley statement, she called Musga again and spoke to ^{CC} (bates 323). Per Colley, she was told at this point by Musga that ^{CC} was asleep (323)*

2302 *Musga receives and answers call from Laura's mom's phone (360-581-5053) which lasts 37 sec.*

2303 *Musga places a call to Laura's mom's phone (360-581-5053) which lasts 4 sec.*

2303 *Musga places a call to Laura's mom's phone (360-581-5053) which lasts 3 minutes, 26 sec.*

2306 *Musga places a call to Laura's mom's phone (360-581-5053) which lasts 38 sec.*

2309 *Musga places a call to "Dave" (253-653-2240) which lasts 1 minute, 59 sec.*

2311 *Musga places a call to unknown number (253-792-9601) which lasts 1 minute, 58 sec.*

2314 *Musga places call to Leah's phone (360-470-3043) which lasts 31 sec.*

2316 *Musga places call to Leah's phone (360-470-3043) which lasts 1 minute, 46 sec.*

? Per Musga statement, *CC* won't go to sleep. Musga lets *CC* come back into the living room. Then lays *CC* back down on his/Laura's bed instead of crib. (bates 256)

2400-0030 Per Musga statement, *CC* is now in bed by himself in Musga/Laura's bed (bates 256)

0002 *Musga places* call to Leah's phone (360-470-3043) which lasts 3 minutes, 39 sec.

0013 *Musga receives and answers* call from "Ron" (or Ron's phone) (360-470-0885) which lasts 15 minutes, 55 sec.

0030 Musga comes in and lays next to *CC* with his arm around *CC*. They fall asleep. (bates 256)

0126 *Musga receives and answers* call from Leah's phone (360-470-3043) which lasts 1 minute, 24 sec.

0236 *Musga places* call to "Rogers T" (253-442-3641) which lasts 26 sec.

0237 *Musga places* call to "Rogers T" (253-442-3641) which lasts 41 sec.

0241 *Musga places* call to "Rogers T" (253-442-3641) which lasts 1 minute, 17 sec.

0242 *Musga places* call to "Old Man Headphones" (253-495-2339) which lasts 7 sec.

0253 *Musga places* call to "Janet Musga" (425-238-3622) which lasts 14 minutes, 55 sec.

0300 Per Musga statement, he gets call from Laura who is "checking up on how everything is doing" (bates 256, and also, see bottom of bates 258 where the time of the call is identified). *CC* says "I love you" to his mom. (It appears from the transcript that Musga may be confusing two different phone calls from Laura that occurred at different times).

0300 or 0330 Per Colley statement, she calls *Musga* again. She indicates in her statement that *Musga* had been texting her (Colley, but on Leah's phone). She (Colley) calls *Musga* and *Musga* expresses he is worried about Chayson's bruises. (bates 323)

0320 or 0325

After "what seemed to be twenty, twenty-five minutes" (after most recent call from Laura) (see bates 256), *Musga* wakes up to "a thud". Per *Musga*, he looked down and saw that *CC* had "hit the floor". *CC* didn't cry. Didn't talk.

?

Musga trying to get *Chayson* to go back to sleep. Rubbing *CC* chest. Notices *Chayson* not breathing. Begins CPR. Runs downstairs and calls 911. (bates 256)

0411

Tacoma Fire Department Paramedics evaluate *CC* and note that he is without a pulse and not breathing. (bates 183)

EXHIBIT 2

Schedule of Attorney Visits/Court and Discovery Dates

No.	Date	Attorney (s)	Time In	Time Out	Court Date	Discovery Date
1	04/01/13					
2	04/02/13	Keith Hall	11:00	12:24	4/1/13 (continued)	
3	04/03/13				04/03/13	
4	04/05/13	K. Hall / R. Warner	10:00	12:14		
5	04/18/13	K. Hall / R. Warner	10:45	12:21		
6	04/23/13				04/23/13 (twice)	
7	04/23/13					04/24/13
8	05/06/13	K. Hall / R. Warner	10:05	11:21		
9	05/07/13					05/07/13
10	05/08/13				5/8/13 (continued)	
11	05/15/13					05/15/13
12	05/16/13	Richard Warner	08:11	11:11		
13	05/22/13	K. Hall / R. Warner	14:12	14:50		
14	05/29/13				5/29/13 (continued)	
15	05/31/13					05/31/13
16	06/10/13	Richard Warner	10:30	12:22		
17	06/13/13					06/13/13
18	06/26/13					06/26/13
19	07/01/13	Richard Warner	12:00	13:26		
20	07/11/13	Richard Warner	09:49	11:34		
21	07/18/13	Richard Warner	11:00	11:56		
22	08/08/13	Richard Warner	14:40	15:54		
23	08/13/13				8/13/13 (continued)	
24	08/13/13					08/13/13
25	08/19/13	Richard Warner	10:00	11:03		
26	08/22/13	Richard Warner	10:31	11:46		
27	08/26/13	Richard Warner	11:00	12:52		
28	08/27/13					08/27/13
29	08/29/13	K. Hall / R. Warner	13:23	14:17		
30	08/29/13					08/29/13

Schedule of Attorney Visits/Court and Discovery Dates

31	09/06/13	K. Hall / R. Warner	10:58	12:05		
32	09/09/13				09/09/13 (cancelled)	
33	09/09/13				09/09/13 (cancelled)	
34	09/09/13				09/09/13	
35	09/12/13	Richard Warner	12:38	13:04		
36	09/17/13				9/17/13 (continued)	
37	09/20/13	Richard Warner	09:45	10:19		
38	10/11/13	Richard Warner	09:38	10:41		
39	11/04/13					11/04/13
40	11/08/13	Keith Hall	12:52	15:08		
41	11/18/13	Richard Warner	08:20	09:29		
42	11/18/13				11/18/13 (cancelled)	
43	11/21/13				11/21/13 (cancelled)	
44	11/21/13				11/21/13	
45	12/05/13				12/05/13	

APPENDIX W

Did we ever get anything from Pierce County? Have a great weekend. RW

The Fine Print: Confidentiality. This email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and is legally privileged. This email and any attachments are confidential and may also be protected by attorney client privilege, the work product doctrine or other non-disclosure protection. If you believe that it has been sent to you in error, you may not read, print, disclose, copy, store or disseminate the email or attachments or any information in them. Please reply to the sender noting that you have received the message in error and then delete it. Thank you.

separator.tiff ↵

Subject: RE: Test
Date: November 1, 2013 at 4:34:49 PM PDT
From: Keith Hall <Keith@NewtonandHall.com>
To: <richardwarnerlaw@gmail.com>

Yes, I am happy to do it. Just let me know if you have any pointers!

Keith Hall Attorney at Law

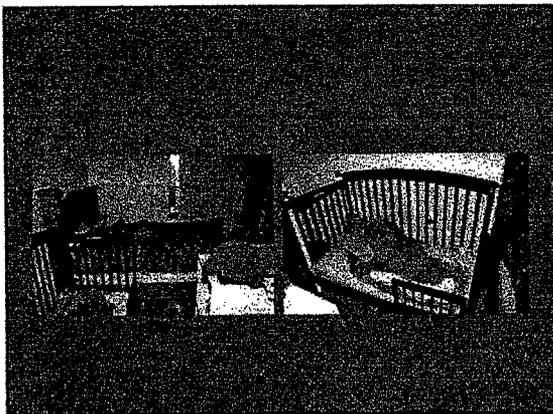
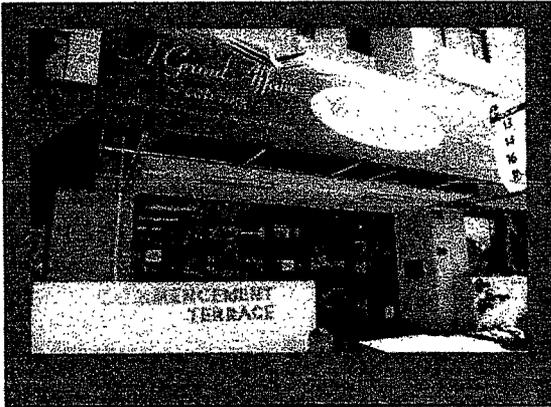
Newton & Hall, Attorneys at Law, PLLC 610 Central
Avenue South Kent, WA 98032 253.852.6600 office
253.852.6800 fax keith@NewtonandHall.com

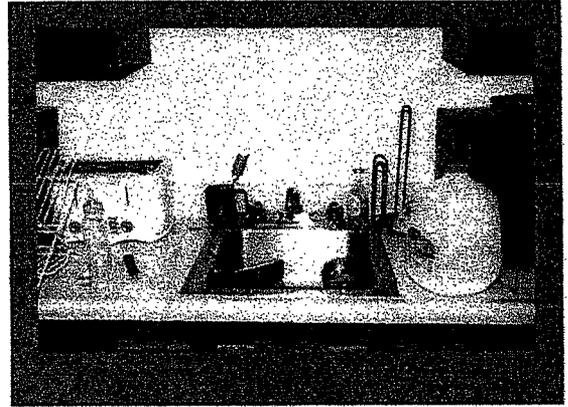
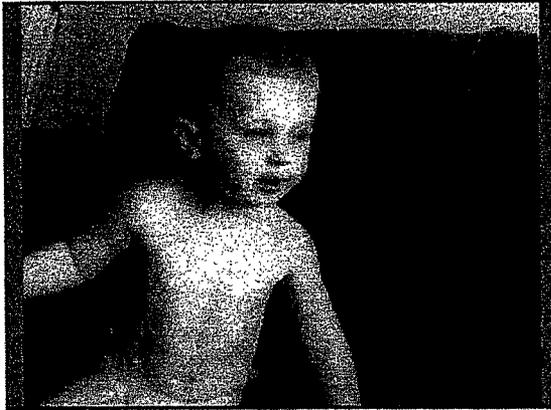
www.NewtonandHall.com

From: richardwarnerlaw@gmail.com
[mailto:richardwarnerlaw@gmail.com] **Sent:** Friday,
November 01, 2013 3:58 PM **To:** Keith

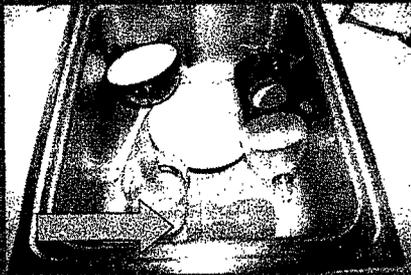
APPENDIX X

State of Washington
vs.
Jake Joseph Musga





Acute Ethanol Intoxication – 0.11



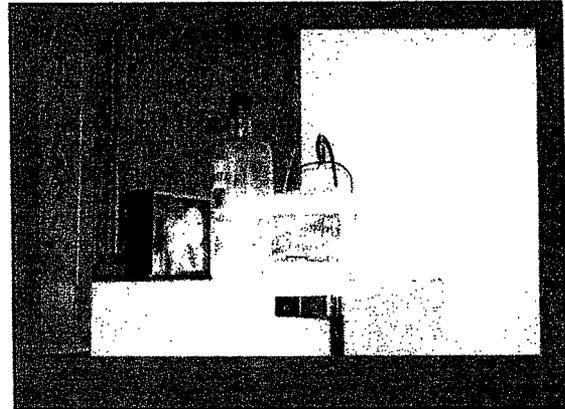
- Repeated denials throughout interview with law enforcement
- Caught C.C. drinking out of his glass of alcohol and then gave him some more in his sippy cup – pg. 6

Intoxication

- LE: "That is the first drink that I've had in months. We bought, we actually bought that when we first moved in, so a month, almost two months and it's hasn't [sic] even gone yet." BS 267-268

Evaluation

- Bottle was 2/3 consumed and he finished the last 1/3 of the bottle – pg. 5
- Drank every once in a while, mostly every weekend – pg. 5
- Used heroin twice since rehab – pg. 5



Intoxication

- "there was cheap Vodka and Pepsi...um, it was not very strong.. probably three or four shots," BS 257
- 1/3 of the bottle, i.e. eight to nine ounces and a blackout

Alcohol Use

- Generally drank alcohol 10 times per year – Pg. 3
- Blackout twice a year but nothing unusual happened –Pg. 4

Alcohol/Drug Use – Pg. 9

- 7/30/12 – diagnosed opioid dependence, cannabis dependence, cocaine dependence, nicotine dependence
- Clinical HX: drinking 30 times/month

Drug Use

- Evaluation: used it two times post-rehab
- PSI: last time was the day before entered rehab

Rehab

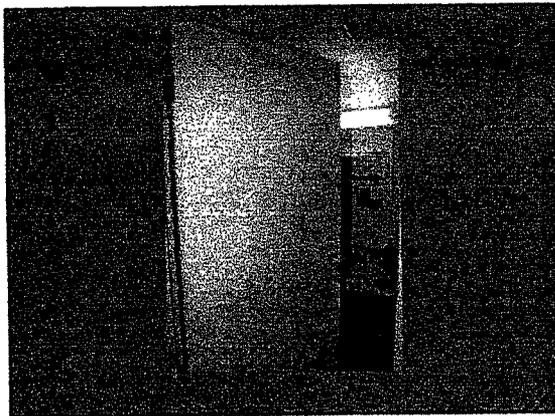
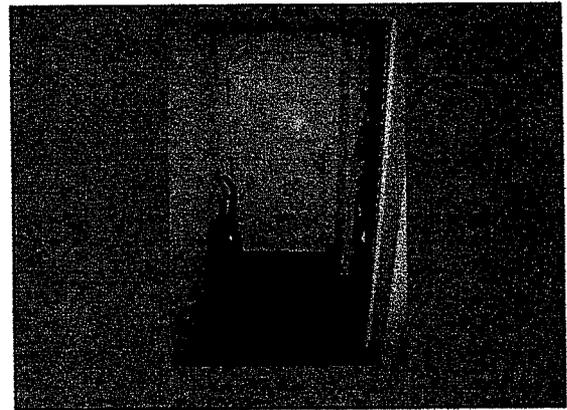
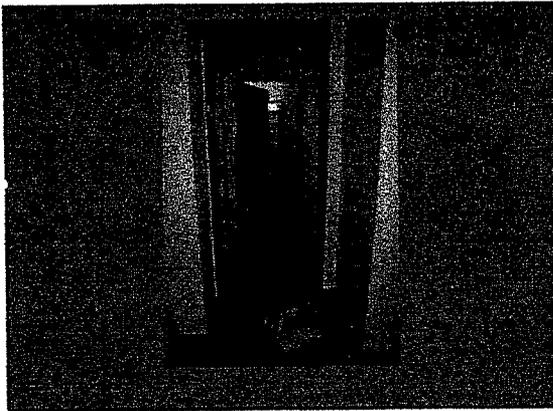
Law enforcement: claims he graduated early – pg 247

PSI: successfully completed program (Pg. 12)

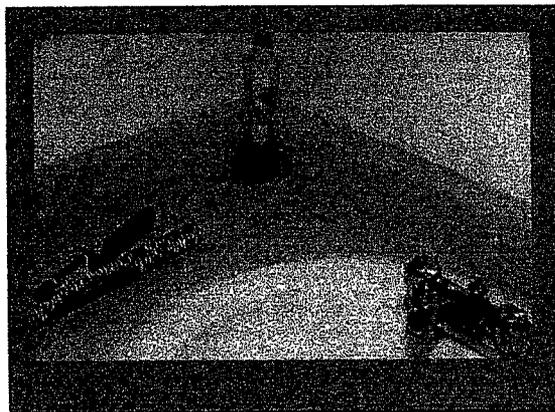
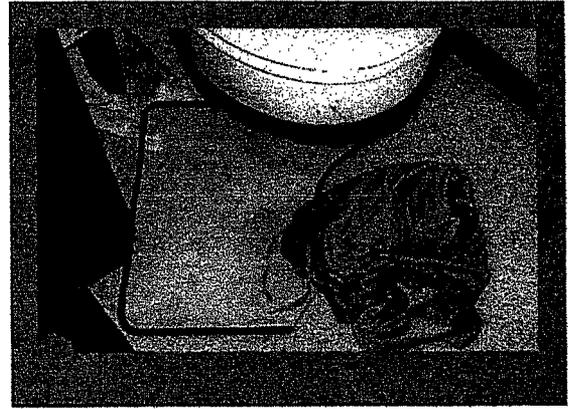
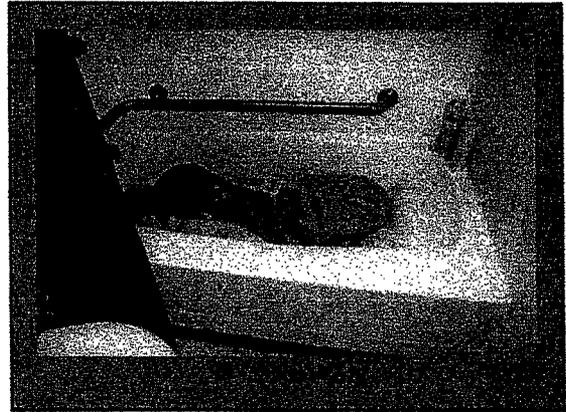
Evaluation: from Ollala records: left because he got into an argument with another patient and was discharged for his own safety. Would have been allowed to be re-admitted after 30 days. (Pg. 10)

Fighting

- Law enforcement: never been in a fist fight
- Evaluator: been in several fist fights, including a fight that allegedly resulted in a concussion (Pg. 5)



• After C.C. threw up he took him into the shower to clean him up





Remorse

- Demeanor – Officer Darland, Ricky Saldavia, Detective Vold, Detective Nist
 - Calm, casual, callous
 - “a life is a life”
 - “sitting with a fucking sucker in his mouth right now”

Remorse

- “In fact, given the dire circumstances of Mr. Musga’s current charges this MMPI-2 is all the more remarkable because there is no evidence of depression, subjective distress, social withdrawal, or feelings of isolation or alienation.” Pg. 2
- “Despite the current circumstances, Mr. Musga is not depressed or even particularly anxious.” Pg. 2

Defendant’s Timeline (pg. 6) vs. The Evidence

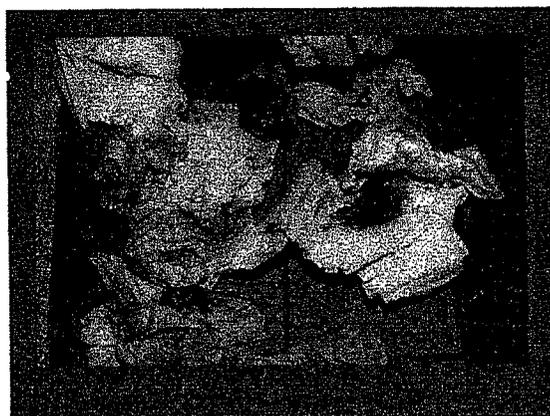
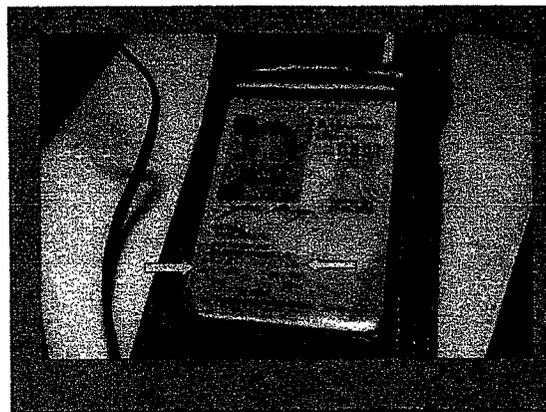
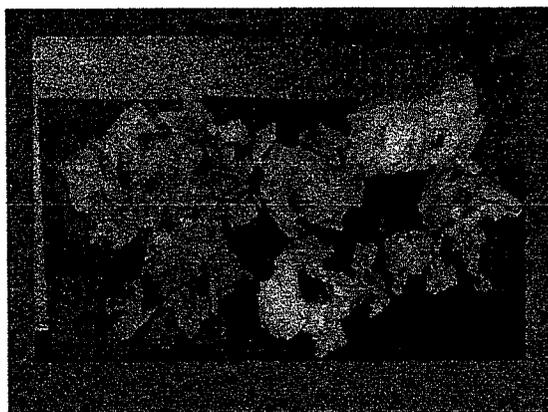
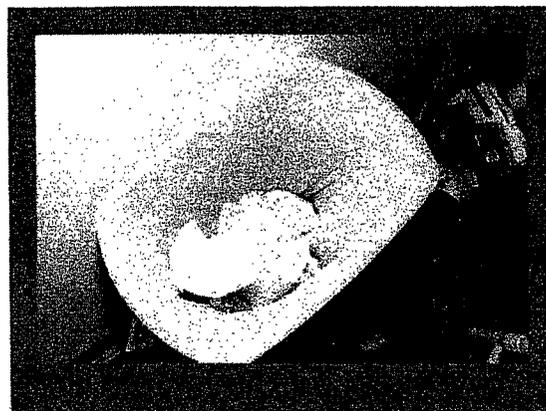
- C.C. fell off the couch, straightforward onto his head
- Speaks to Laura at midnight, then wait his movie with C.C. for 30 minutes
- C.C. falls off of bed – then realizes not breathing
- Runs downstairs, throws phone to witness and asks him to call 911
- is interviewed for 8 hours
- Downstairs neighbor – fighting and stamping noises from 11pm until 1:30 am
- Only put C.C. down and started performing CPR AFTER Ricky Saldavia saw him
- Number input into phone NOT 911
- interview 10/29-12/08

Acute Anorectal Lacerations from Rape

- Full thickness anorectal mucosa laceration – 1 cm length – tear extends into the underlying muscular layer and from the anal verge to the pectinate line
- Circumferential anal mucosal hematoma
- Deep perirectal hemorrhage – extends 4-5 inches inside

Rape

- Acid Phosphatase: substance found in high amounts in semen and lower amounts in some other body fluids

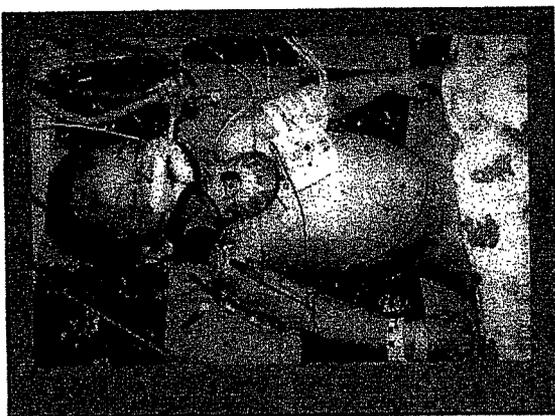


Acute Blunt Injuries of the Head

- Face and scalp bruises and abrasions
- Superior frenulum laceration
- Multiple sub-scalpular contusions

Acute Brain Injuries

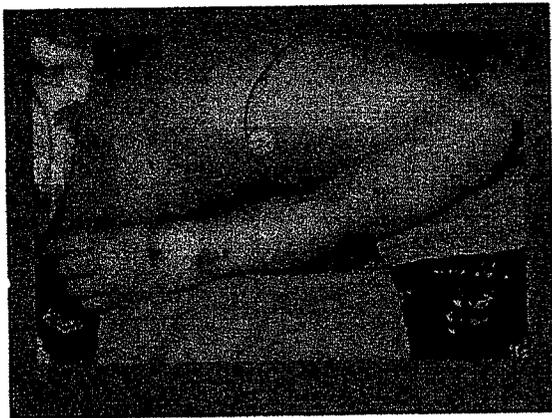
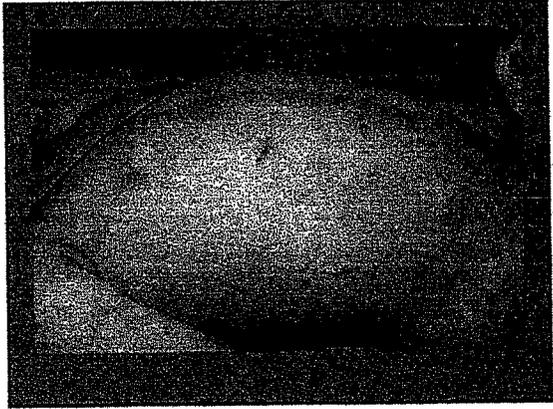
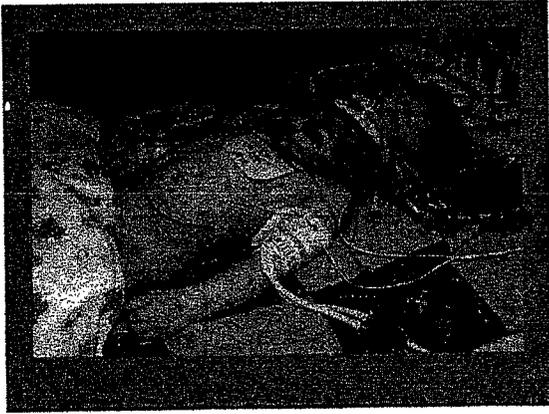
- Acute subdural hematomas
- Acute subarachnoid hemorrhages
- Focal traumatic axonal injury
- Cerebral edema
- Early hypoxic ischemic damages





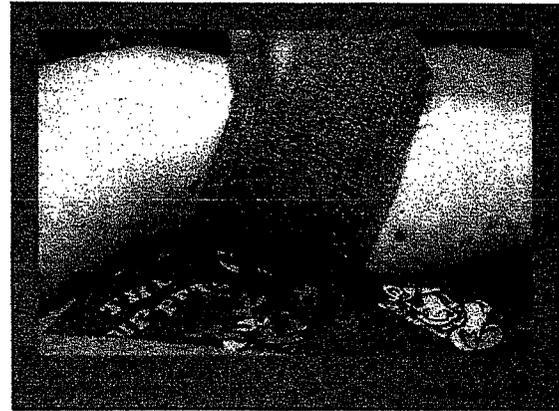
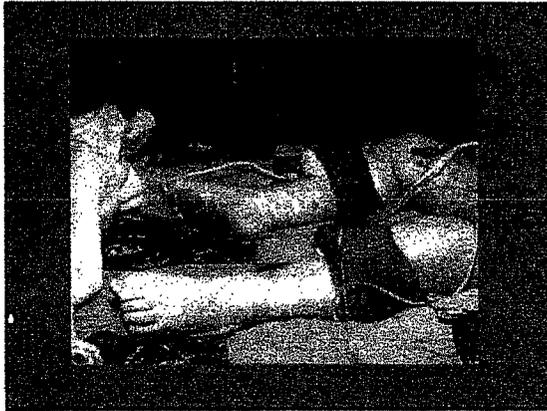
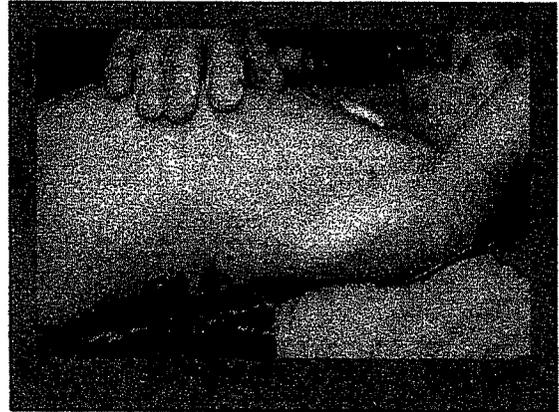
Acute Blunt Injuries of the Abdomen

- Torso bruises and abrasions
 - 13 discrete contusion on the abdomen
- Mesentery laceration with hemoperitoneum – 800 milliliters



Extremities

- Multiple violaceous to red contusions



Back/Buttocks

- More than 30 discrete contusions and abrasions of the back and buttocks



Responsibility

- "In our interview, Mr. Musga denied or said he had no recall of hurting this child and found it upsetting to think the injuries to the child, including possible sexual injuries, were attributable to him." – pg. 10



APPENDIX Y

Resume for Patrick A. Pitt

Suite 100-8 • 4423 Pt. Fosdick Dr. NW • Gig Harbor, WA 98335

Tel: (253) 858-5012 • Fax (253) 461-9191 • Cell (253) 209-4655 • Email: patrickpitt@afrc.org

Summary:

An experienced investigator with extensive law enforcement and commercial skills gained through over 30 years of specialist Police service, with progression to senior detective rank, during domestic and overseas assignments. Investigation experience includes surveillance, intelligence, fraud, narcotics, counter terrorism, murder, sexual offences, arson, Officer involved incident investigation and review, cold case reviews, appeals and the full spectrum of serious crime. Specialist training and experience in major incident command, analysis and review.

A licensed Washington Private Investigator (Principal) and a member of the United States Association of Professional Investigators, Washington Association of Legal Investigators, a US citizen.

Core Competencies:

- Proven capabilities as an effective leader and skilled manager
- Experienced and effective Investigator, capable of successfully dealing with the most serious and complex cases. Skilled in the gathering and documenting of evidence, and subsequent presentation in court.
- Skilled and experienced in serious Cold Case and Defense related investigations
- Major incident command and investigation

Experience:

Hampshire Constabulary 1969 -1999 – Constable to Chief Superintendent

- **Detective Constable** – investigations included company fraud, robbery, burglary, theft;
- **Detective Sergeant** - duties included undercover narcotics, leading regional narcotic squad; two years seconded to the Royal Ulster Constabulary (RUC), Belfast), sub-divisional detective in terrorist activity area - duties include military/intelligence liaison, murder investigations, robbery, IED incidents, investigating firearms and explosives crime, service on serious crime squad. Promoted to Detective Inspector;
- **Detective Inspector** – continued service with RUC leading specialist investigation team, in active terrorist areas investigating serious crime. On return to home agency served as precinct Detective Commander with commensurate investigation responsibilities throughout serious crime spectrum, including specific responsibility for the investigation of non accidental injury to children and Officer involved matters;

- **Detective Inspector and Detective Chief Inspector** - seconded to New Scotland Yard Special Operations (SO 11), led team investigating serious level crime and conducting major intelligence led operations;
- **Superintendent/Chief Superintendent** - seconded to USA (Florida and Tacoma) to lead a specialist UK Police team engaged on duties involving biometric and computer related crime detection, providing intelligence and biometric investigating capabilities. Worked with US Secret Service and other Federal agencies. Promoted to **Chief Superintendent** during this period with international responsibilities and a specialist role in the Caribbean linked with Interpol.

Operations Manager (1999- 2002) - Continued employment with the UK Police on secondment to Tacoma WA, managing and expanding unit presence internationally and within the USA, actively involved in support of internationally based criminal investigations, undertaking duties in a number of countries.

Principal Consultant (2002 -2005) – specializing in the law enforcement sector assignments including, biometric capabilities, emergency planning, potential incident analysis and response submission for Beijing Olympics, submission of various technical studies including assessment of UK in-country public place CCTV for adoption by French law enforcement. Engaged in provision and implementation of vehicle identification strategies for law enforcement/secure infrastructure linked to intelligence capabilities. Specialized in narcotic interdiction strategies and real time operations for law enforcement,

Contracted Director of Security (2005 – 2010) - engaged by major international passenger transportation provider, with responsibility for North American Security and Investigation Operations (Mexico, Canada, USA). Responsibilities included major criminal investigations, litigation support, insurance defense, incident planning, management and analysis, together with liaison duties involving the Transportation Security Administration (TSA), Department of Homeland Security and other Federal/State law enforcement agencies.

2010 - Present

Principal of a company engaged in the provision of specialist criminal defense, insurance defense and litigation support investigative capabilities to the legal profession and public agencies.

Education:

- College, graduate of Police Staff College, Bramshill (UK), plus additional role related specialist and management training.

APPENDIX Z

August 29 2013 11:19 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-1-01369-1

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-01369-1

vs.

JAKE JOSEPH MUSGA,

DISCOVERY DISTRIBUTION RECEIPT

Defendant

NOTICE: The victim(s) in this action has/have requested that all interviews be scheduled through this office and that a representative from this office be present during any interviews.

A request was made for discovery in this case and the following is attached hereto:

- Pages Provided: 788 through 814 Via CD
- And/or/including: 1 DVD Case Report Motorola MB810 (SMS validation)
- Date request processed: AUGUST 29, 2013
- Defense Attorney: Keith Robert Hall
- Prosecuting Attorney: JARED AUSSERER

This discovery was distributed as follows:

RECEIPT BY DEFENSE COUNSEL DATED: _____

I hereby acknowledge, on behalf of the defendant above-named, that I have received discovery from the State. I have filed a Notice of Appearance in this case. Pursuant to CrR 4.7(h)(3), these materials must remain in the exclusive custody of the defense attorney.

ATTORNEY FOR DEFENDANT

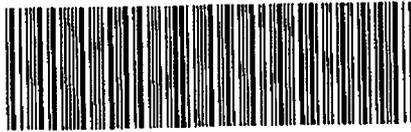
I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: That on this date, I deposited in the mails of the United States of America; Legal Messenger; Pierce County Routing; FAX; a properly addressed packet directed to Keith Robert Hall containing a copy of this document and the above referenced discovery.

DATED: AUGUST 29, 2013


LEGAL ASSISTANT

djk

APPENDIX aa



13-1-01369-1 41604227 JDSWCD 11-22-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 13-1-01369-1

NOV 22 2013

vs.

JAKE JOSEPH MUSGA,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody).

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: November 21, 2013

By direction of the Honorable
Kevin Stock
JUDGE
KEVIN STOCK

By: Mark Engler
DEPUTY CLERK

CERTIFIED COPY ~~DATE~~ NOV 22 2013 By Kevin Stock Deputy



STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office. IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

dlk





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-01369-1

vs.

JUDGMENT AND SENTENCE (JS) 2 2 2013

JAKE JOSEPH MUSGA

Defendant.

SID: 26750183

DOB: 03-05-94

- Prison
- RCW 9.94A.712/9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

I HEARING

1.1 A sentencing hearing was held 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 SEPTEMBER 9, 2013 by [X] plea [] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	Murder In The First Degree (D3)	9A.32.030(1)(c), 9.94A.535(3)(b), 9.94A.535(3)(a), 9.94A.535(3)(y), 9.94A.530(2), 9.94A.535 9.94A.535(2)(y)	N/A	03-30-13	130890189
II	Rape Of A Child In The First Degree (136)	9A.44.073, 9.94A.535(3)(a), 9.94A.535(3)(b)	N/A	03-30-13	130890189

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 12

13-9-12421-2

* (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, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Original Information

- 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.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- 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): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	XV	261-347 Months	N/A	261-347 Months	\$50,000/ Life
II	2	XII	111-147 Months-Life	N/A	111-147 Months-Life	\$50,000/ Life

For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: Exceptional, Register, Standard LFO's, No Contact w/Minors, Psycho-Sex follow-up; Alcohol/Drug Follow-up.

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) I & II.

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):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.10.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____

The court decided the defendant should should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in Paragraph 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: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNRJN \$ 200.00 Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 900.00 **TOTAL**

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9A.4A.753. A restitution hearing:

shall be set by the prosecutor, if necessary

is scheduled for _____

RESTITUTION. Order Attached

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 12

[] 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, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per CCO per month commencing Per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[X] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT
The defendant shall not have contact with minors including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ 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.

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

<i>Abide by all conditions of Appendix # of PSI & CCO</i>
<i>No contact with minors</i>
<i>Legal financial obligations, including any restitution</i>
<i>Register as sex offender per statute</i>

4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

(a) CONFINEMENT. RCW 9.94A.507. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>608</u> months on Count	<u>I</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

CONFINEMENT. RCW 9.94A.712/⁵⁰⁷ Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count <u>II</u>	Minimum Term: <u>258</u> Months	Maximum Term: <u>life</u>
Count _____	Minimum Term _____ Months	Maximum Term: _____
Count _____	Minimum Term _____ Months	Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: 608 months (to life on Count II)

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. 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, sexual motivation, VUCSA 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(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: 175 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[X] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) I 36 months for Serious Violent Offenses - Murder I

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

[X] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

Count II until _____ years from today's date [X] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

Count _____ until _____ years from today's date [] for the remainder of the Defendant's life.

(B) 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) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's 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.507 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 court orders that during the period of supervision the defendant shall:

[X] consume no alcohol.

[X] have no contact with: minor & victim family

[] remain [] within [] outside of a specified geographical boundary, to wit: _____

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

participate in the following crime-related treatment or counseling services: Per cco

undergo an evaluation for treatment for domestic violence substance abuse
 mental health anger management and fully comply with all recommended treatment

comply with the following crime-related prohibitions: Per cco

Other conditions:
Per cco

For sentences imposed under RCW 9.94A.702, 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.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

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:

CONFINEMENT. RCW 9.94A.507. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

Count _____ Minimum Term: _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

Count _____ Minimum Term _____ Months Maximum Term: _____

The Indeterminate Sentencing Review Board may increase the minimum term of confinement. **COMMUNITY CUSTODY** is Ordered for counts sentenced under RCW 9.94A.507 from time of release from total confinement until the expiration of the maximum sentence:

Count _____ until _____ years from today's date for the remainder of the Defendant's life.

Count _____ until _____ years from today's date for the remainder of the Defendant's life.

Count _____ until _____ years from today's date for the remainder of the Defendant's life.

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. 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-WITHOLDING 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 may be taken without further notice. 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 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. 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 court clerk shall forward a copy of the defendant's driver's license, identicsard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

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 (e.g., 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 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 at the time of your release and within three (3) business days from the time of 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 (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. 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 out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: 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 three (3) business 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 three (3) days of moving to the new state or to a foreign country 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 three (3) business days prior to arriving at the institution. 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 three (3) business days prior to beginning to work at the institution. 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 three (3) business days of such termination. 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 three (3) business days prior to arriving at the school to attend classes. 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 three (3) business days 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 three (3) business days after losing your fixed residence, you must provide 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 within three (3) business days after entering 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.

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 13-1-01369-1

I, KEVIN STOCK 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 said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Katrina Smith
Court Reporter

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense *Rape Child 1*
- serious violent offense *Murder 1*
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: _____

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: *murder*

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: *Pen cco*

APPENDIX F

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 three (3) business days of the entry of the order. RCW 9A.44.130(7).

5.8 [] The court finds that Court _____ 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: _____

DONE in Open Court and in the presence of the defendant this date: Nov. 21, 2013.

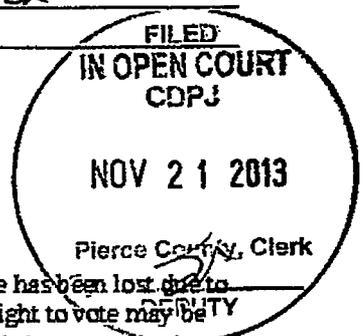
JUDGE
Print name

Bryan Chubb
BRYAN CHUBB
JUDGE

Angella Williams
Deputy Prosecuting Attorney
Print name: Angella Williams
WSB # 36673

Richard Warwick
Attorney for Defendant
Print name: RICHARD WARWICK
WSB # 21399

Jake Musca
Defendant
Print name: JAKE MUSCA



VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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: Jake Musca

IDENTIFICATION OF DEFENDANT

SID No. 26750183
(If no SID take fingerprint card for State Patrol)

Date of Birth 03-05-94

FBI No. 15904RD9

Local ID No. UNKNOWN

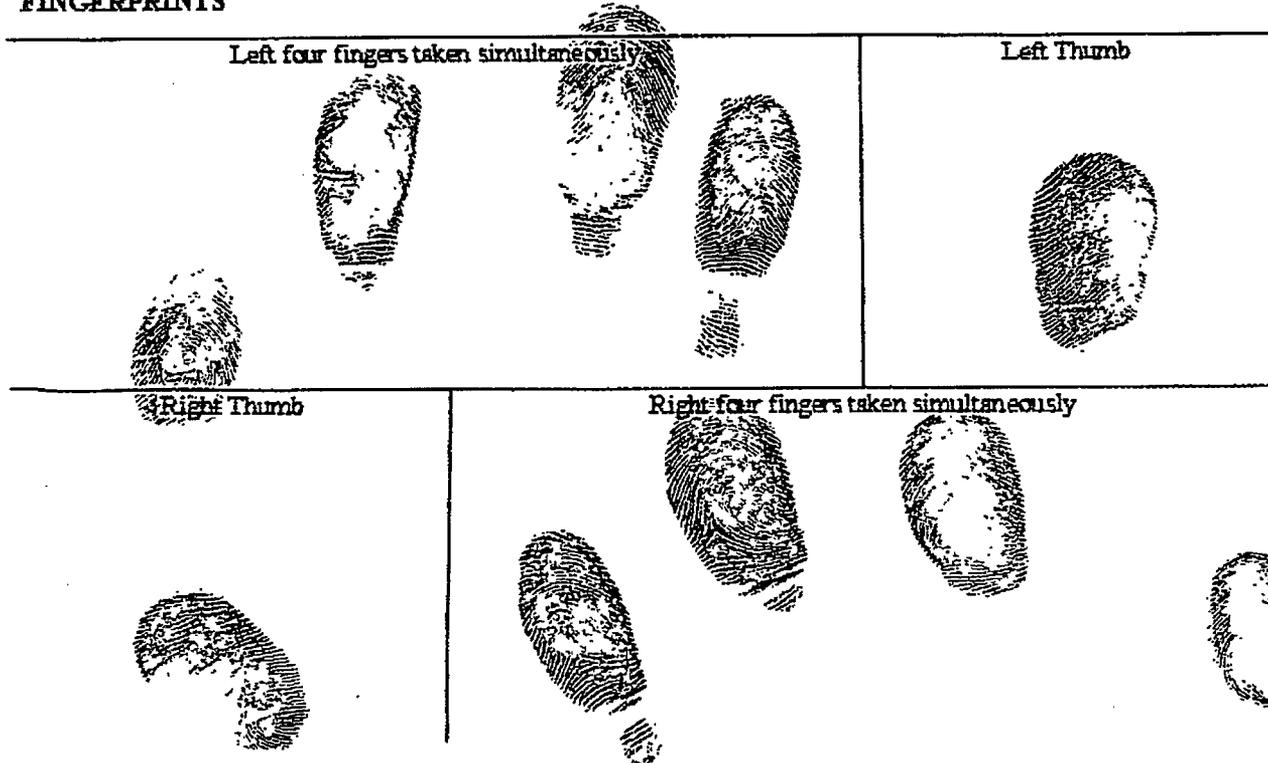
PCN No. 540948658

Other

Alias name, SSN, DOB: _____

Race:					Ethnicity:		Sex:
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/>	Male
<input type="checkbox"/> Native American	<input type="checkbox"/>	<input type="checkbox"/> Other: :			<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/>	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, Susan M. Winnel Dated: NOV 21 2013

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: Pierce County Jail

APPENDIX bb

DECLARATION OF TODD MAYBROWN

I, Todd Maybrown, do declare that:

1. I am an attorney licensed to practice in the State of Washington. Currently; I am a partner with the law firm of Allen, Hansen & Maybrown, P.S. in Seattle, Washington.

Background Training and Professional Experience

2. For the Court's convenience, I will provide a brief outline of my background and my professional experience as an attorney.

3. After graduating from the University of Michigan Law School in 1988, I worked for two years as a law clerk for the District Court for the Western District of Washington. I have been a member of the Washington State Bar Association since 1990. I have also been admitted to the bars of the United States District Court for the District of Alaska, the United States District Court for the Eastern District of Michigan, the United States District Court for the Eastern District of Washington, the United States District Court for the Western District of Washington, the United States District Court for Idaho, the Sixth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

4. From 1990 to the present, I have specialized in criminal defense, and have represented numerous clients faced with serious felony charges, including several homicide cases. I have handled many trials and appeals in state and federal courts.

5. I have been appointed to represent numerous defendants charged with aggravated first-degree murder in the State of Washington. Since 1997, I have represented seven defendants charged with aggravated first-degree murder in the State of Washington. *See, e.g., State v. Louis Chen*, King County Superior Court Cause No. 11-1-07404-4 SEA; *State v.*

Martin Francisco, King County Cause No. 97-C-08624-4 SEA; *State v. Corey Beito*, King County Cause No. 89-1-00243-0 KNT; *State v. Michael Thornton*, Benton County Superior Court No. 98-1-00493-6; *State v. Michael Roberts*, King County Cause No. 94-C-03249-2 (after reversal by Washington Supreme Court); *State v. Rosendo Delgado, Jr.*, Yakima County Cause No. 99-1-00736-6; *State v. Blake Pirtle*, Spokane County Cause No. 92-1-00955-3 (after reversal by Ninth Circuit Court of Appeals). With the exception of the *Chen* case, each of these cases was ultimately resolved without the imposition of a death sentence.¹

6. More recently, during 2014, I was appointed as “learned counsel” to represent a defendant charged with murder for hire and other related charges in the United States District Court for the Eastern District of Washington. See *United States v. James Henrikson*, District Court Cause No. 14-cr-124-SMJ. In 2006, I was appointed as “learned counsel” to represent a defendant charged with murder and racketeering charges in the United States District Court for the Western District of Washington. See *United States v. Rollness*, Cause No. CR06-41RSL (W.D. Wash.).

7. In addition to my work at the trial court level, the Washington Supreme Court has appointed me to represent several capital defendants during appeals and/or personal restraint proceedings: Dayva Cross (71267-1); James Brett (No. 63835-7), and Blake Pirtle (No. 64300-8).

8. In 1997, the State of Washington enacted a court rule that requires a panel created by the Supreme Court to create a list of attorneys who “meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of

¹ The *Chen* case is still pending, but the King County Prosecutor announced his decision not to seek a death sentence after reviewing the defense mitigation package.

capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals.” Superior Court Special Proceeding Rule 2. That panel has concluded, since its formation, that I am among the attorneys qualified to represent capital defendants at all phases of the litigation.

9. Also, I have litigated several capital habeas corpus actions under 28 U.S.C. Sec. 2254. *See, e.g., Sivak v. Hardison*, 658 F.3d 898 (9th Cir. 2011); *Pirtle v. Morgan*, 313 F.3d 1160 (9th Cir. 2002); *Rupe v. Wood*, 93 F.3d 1434 (9th Cir. 1996); *Rupe v. Wood*, 863 F.Supp. 1307 (W.D. Wash. 1994); *Rupe v. Wood*, 863 F.Supp. 1313 (W.D. Wash. 1994); and *Wood v. Paskett*, Idaho Cause No. CV-99-0198-S-EJL.

10. I have been a member of the Washington Association of Criminal Defense Lawyers (“WACDL”) and the National Association of Criminal Defense Lawyers (“NACDL”) since 1990. From 1997 to 2007, I was co-chair of WACDL’s death penalty committee. In that capacity, I have consulted with many attorneys on numerous homicide and death penalty cases.

11. In addition to my general training, I have attended many CLEs that focused exclusively on the defense of homicide cases and the law of capital punishment. Since 2000, I have presented several lectures regarding legal issues in criminal cases, capital litigation and post-conviction proceedings. I am familiar with Washington’s criminal statutes – including Washington’s death penalty statutes – and the several state and federal court decisions that have interpreted and discussed those same statutes.

12. I have worked closely with numerous criminal defense attorneys who practice in this legal community and I have supervised and assisted in the training of many trial lawyers. In addition, since 2006, I have worked as an Adjunct Professor of Trial Advocacy at the University of Washington Law School in Seattle.

Request for Expert Opinion in Musga Case

13. I have been asked by Barbara Corey, counsel for Jake Musga, to provide an expert opinion as to the performance of trial counsel in *State v. Musga*, Pierce County Cause No. 13-1-01369-1. To complete my assessment, I have reviewed numerous legal documents and pleadings related to the *Musga* case, including: Information (dated April 3, 2013); Declaration for Determination of Probable Cause (dated April 3, 2013); police reports and records from Tacoma Police Department Incident No. 130890189; selected transcripts from the trial court proceedings in *State v. Musga*, Pierce County Cause No. 13-1-01389-1; Statement of Defendant on Plea of Guilty to Non-Sex Offense (dated September 9, 2013) and Statement of Defendant on Plea of Guilty to Sex Offense (dated September 9, 2013; State's Sentencing Memorandum (dated November 14, 2013) with attached documents; Defense Presentencing Documents (dated November 14, 2013) with attached documents; Pre-Sentence Investigation report (dated November 18, 2013); Judgment and Sentence (dated November 21, 2013); and Findings of Fact and Conclusions of Law for Exceptional Sentence (dated December 5, 2013).

14. Based on this review, it is my opinion that the performance of trial counsel fell below prevailing professional norms and standards. My opinion and conclusion, as discussed more fully below, is that Mr. Musga's trial attorneys provided deficient representation during the handling of this case.

Background Facts

15. On April 3, 2013, the Pierce County Prosecuting Attorney filed an Information charging Musga with the crime of Murder in the First Degree (Count I) and Rape of a Child in the First Degree (Count II). See Information in *State v. Musga*, Pierce County Cause No. 13-1-

01369-1. In addition, the Information contained allegations of statutory aggravating circumstances as to each offense. *See id.*

16. The allegations that formed the basis of these charges are outlined in a Declaration for Determination of Probable Cause. According to the declarant, Jake Musga sexually assaulted, physically assaulted and killed a young boy, during the period between March 29, 2013 and March 30, 2013. The declaration notes that, at approximately 4:00 a.m. on March 30, 2013, Tacoma Police Officers responded to a report that a “frantic male” – later identified as Jake Musga – was found in the lobby of the Commencement Terrace Apartment Complex “holding a child and crying.” The child, identified as CC (DOB 3/5/11) in the charging documents, died later that same morning after being taken to Mary Bridge Hospital in Tacoma. The declarant claimed that, according to doctors who treated CC just prior to his death, “the child was bruised from ‘head to toe,’ suffered bleeding in the brain and stomach, had a collapsed lung and bruising to his rectum.” The declarant also claimed that CC had a blood alcohol level of .12 at the time of his admission to the hospital. Finally, the declarant stated that “while CC had suffered injuries too numerous to count there were specific fatal blows to the head and torso.”

17. Jake Musga was interviewed by police detectives on March 30, 2013. This interview, which lasted approximately 2 ½ hours, was recorded. During that interview, Musga acknowledged that CC had been in his care since March 29, 2013 at approximately 6:00 p.m.² Musga told the detectives that CC was a rambunctious child and that CC often fell and bruised easily. Musga denied that CC suffered any major injuries on March 29, 2013 or March 30, 2013 – although he did note that CC may have suffered minor injuries on March 27, 2013 or

² Other information suggests that CC was left alone with Musga at approximately 7:30 p.m.

March 28, 2013 during an incident where CC needed to be restrained because he had refused to brush his teeth. When speaking with the police, Musga denied that he had intentionally caused any of CC's injuries. Musga also denied that he had not intentionally given CC any alcohol. According to Musga, CC had fallen out of bed while sleeping and Musga then discovered that CC was not breathing.

18. The documents I reviewed indicate that Jake Musga was born on March 5, 2004. This would mean that he had just recently turned 19 years old at the time of the alleged offense conduct. These documents seem to demonstrate that Musga had significant drug and alcohol issues. According to the Pre-Sentence Investigation, Musga had only minimal criminal history – having been convicted of a single misdemeanor offense (violation of an Anti-Harassment Order) in the Marysville Municipal Court during 2012. The Pre-Sentence Investigation indicates that Musga was facing a felony charge (theft of a firearm) in the Snohomish County Superior Court, but Musga was in custody in Pierce County at the time he was scheduled to appear for those court proceedings.

19. Jake Musga was represented by attorneys Keith Hall and Richard Warner during all trial court proceedings.

20. On September 9, 2013, Jake Musga entered a plea of guilty to both offenses charged in the State's Information. Defense counsel prepared two separate plea forms for Musga – one Statement of Defendant on Plea of Guilty to a Non-Sex Offense for Count I and one Statement of Defendant on Plea of Guilty to a Sex Offense for Count II. In both cases, the plea forms indicated that the State's recommendation was "open" and that the State would seek

an exceptional sentence.³ At the time of the change of plea hearing, the trial court judge never advised Musga that the prosecutors would be seeking an exceptional sentence at the time of sentencing. However, shortly after the judge accepted Musga's guilty pleas, the prosecuting attorney notified the judge that the State would be seeking an exceptional sentence.

21. The case proceeded to sentencing before Hon. Bryan Chushcoff on November 21, 2013. The prosecuting attorney recommended a sentence of 720 months on each count. The Department of Corrections recommended a sentence of 494 months on each count. Musga's defense attorneys recommended a mid-range sentence of 300 months on count I to be run concurrently with any sentence on Count II. Judge Chushcoff ultimately imposed an exceptional sentence of 608 months on Count I and 258 months to life on Count II, with each sentence to run concurrently. Judge Chushcoff signed the State's proposed Findings and Conclusions of Law for Exceptional Sentence on December 5, 2013.

Expert Opinions

22. Based upon my review of discovery materials and police reports relating to these matters, the State's case against Jake Musga appeared to be relatively strong. During March 2013, Musga was living with his girlfriend, Laura Colley, and her son, CC, at the Commencement Terrace Apartment Complex in Tacoma. These records indicate that CC was in the care of Jake Musga during the hours prior to his death. The medical evidence, as reported, supported a claim that CC had been physically abused and sexually assaulted prior to his death. The medical evidence also supported a claim that CC died as a result of non-accidental injuries.

³ The defendant's statements on the plea forms, included in paragraph 11 of each form, include acknowledgements of some of the special circumstances alleged in the State's information.

23. Jake Musga was arrested on March 30, 2013. It is my understanding that Musga was held at the Pierce County Jail during the pendency of the trial court proceedings.

24. To properly prepare this case, defense counsel would need to meet with Musga at the jail on many occasions and for many hours. During at least some of these meetings, Musga would need to review the State's discovery documents including all pleadings, police reports and other documents. In particular, Musga and trial counsel would need to spend many hours carefully reviewing Musga's recorded statements to the police detectives on March 30, 2013. Based upon my experience it would take several hours to review and consider this recording and the transcript from the police interview.⁴

25. Pre-trial preparation is most critical – if not the lynchpin – to the defense of any criminal charge. In each case, defense counsel must complete a thorough and exhaustive investigation of all factual and legal matters relating to the State's charges and any potential defense.

26. In this case, it was imperative for Musga's attorneys to conduct a thorough investigation of all factual issues relating to these charges. In particular, the discovery materials suggest that CC may have suffered some (perhaps many) injuries prior to March 29, 2013. It was critical for the attorneys to carefully evaluate each and every injury that CC suffered in an effort to determine whether CC could have been injured by a person or persons other than Musga. The defense must carefully analyze any opinion testimony that might be rendered by the State's experts in the case. To do so, and at a minimum, trial counsel would need to consult

⁴ According to the police reports, this interview lasted approximately 2 ½ hours and the transcript spans 37 pages of single-spaced text. *See* State's Sentencing Memorandum at Attachment C.

with a medical expert who could evaluate and critically assess all medical reports and the autopsy report pertaining to CC and this case.

27. The State's Sentencing Memorandum indicated that CC may have been injured while he was in the care of his mother Laura Colley. *See State's Sentencing Memorandum* at 2-3. It is my opinion that Musga's attorneys were required to interview any witnesses who had seen CC in the days and weeks prior to his death – most particularly Laura Colley – in order to properly evaluate the State's case against the defendant.

28. In every criminal case, defense counsel must provide the client “with sufficient information to make an informed decision on whether or not to plead guilty.” *In re Personal Restraint of McCready*, 100 Wn.App. 259, 263 (2000). *See also State v. Walsh*, 143 Wn.2d 1 (2001). *Accord Lafler v. Cooper*, --- U.S. ---, 132 S.Ct. 1367 (2012); *Missouri v. Frye*, --- U.S. ---, 132 S.Ct. 1399 (2012). The defendant has an absolute right to enter a plea or proceed to trial. Yet defense counsel has a duty to properly advise his client regarding these matters. As noted by the Washington Supreme Court in *State v. A.N.J.*, 168 Wn.2d 91 (2010):

A criminal defense lawyer owes a duty to defend even a guilty client. RPC 3.1; WDA, [STANDARDS FOR PUBLIC DEFENSE SERVICES] at 9; AM. BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION 4–41(a) (3d 1993). Counsel has a duty to assist a defendant in evaluating a plea offer. RPC 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires . . . thoroughness and preparation reasonably necessary for the representation”); RPC 1.2(a) (“In a criminal case, the lawyer shall abide by the client's decision, *after consultation with the lawyer*, as to a plea.” (emphasis added)); *State v. Osborne*, 102 Wn.2d 87, 99 (1984) (*citing State v. Cameron*, 30 Wn.App. 229, 232 (1981)). Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial. *S.M.*, 100 Wn.App. at 413. The degree and extent of investigation required will vary depending upon the issues and facts of each case, but we hold that at the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case

proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.

Id. at 111 (footnotes omitted).

29. Washington's Rules of Professional Conduct provide that a "lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." RPC 1.4(b). It is my firm opinion that, to provide competent representation in a criminal case of this sort, defense counsel must, at an early stage of the proceedings, inform the client of the punishment that the Court can impose if the client is found guilty of the charged conduct.

30. The Pierce County Prosecuting Attorney charged Musga with two Class A felonies. The State's Information included specific allegations under RCW 9.94A.535, thus allowing for a sentence "outside the standard sentence range" for each offense. Given these allegations, the defendant was facing the possibility of a life sentence if convicted of either charge at trial. *See* RCW 9A.20.021 and 9.94A.535.

31. It is important to note that any sentence on Count II (Rape of a Child in the First Degree) would be "indeterminate" in nature. In 2001, the Washington State Legislature enacted a new sentencing scheme for certain sex offenses that significantly increased the consequences of such convictions. Under RCW 9.94A.507(1)(a)(i), the trial court is now required to impose both a minimum term and a maximum term of whatever the maximum punishment is for that Class of offense – which is life imprisonment for designated Class A offenses. The crime of Rape of a Child in the First Degree is one of the offenses that necessarily leads to what is commonly referred to as a "determinate-plus" sentence. *See* RCW 9.94A.507(3)(b) (defendant convicted of Rape of a Child in the First Degree must be sentenced to maximum term of life

imprisonment, the statutory maximum for that crime). Thus, a conviction on Count II would carry the very real possibility that Musga would remain in prison for the remainder of his life. After Musga serves his minimum term, the decision to release him is left to the Indeterminate Sentencing Review Board (“ISRB”).

32. As noted above, the State charged Jake Musga with the crime of Murder in the First Degree. The State did not charge Musga with premeditated murder pursuant to RCW 9A.32.030(1)(a). Rather, the State chose to charge Musga with the crime of felony murder pursuant to RCW 9A.32.030(1)(c). I assume this was a considered decision and that it was based upon the prosecutors’ evaluation of all evidence pertaining to the case.

33. The Pierce County Prosecuting Attorney chose *not* to charge Musga with the crime of Aggravated Murder in the First Degree pursuant to RCW 10.95.020. I assume that this was a considered decision and that it was based upon the prosecutors’ evaluation of all evidence pertaining to the case.

34. I recognize that there was some possibility that the Pierce County Prosecuting Attorney could have filed an Amended Information if the case had proceeded to trial. However, the State could not charge Musga with Aggravated Murder in the First Degree unless it could prove that Musga committed the murder with “premeditated intent.” *See* RCW 10.95.020 (referring back to RCW 9A.32.030(1)(a)). The State also would have needed to prove a specific aggravating factor pursuant to RCW 10.95.020. Based on my review of the evidence, I have significant questions whether the State would have been able to prove such a charge in this case.

35. Nevertheless, if we assume that the State could attempt to charge Musga with Aggravated Murder in the First Degree, we could also assume that the State could also attempt to seek a sentence of death. In my view, these are not reasonable assumptions. Based on my

experience, I do not believe that the prosecuting attorney would have ever sought a death sentence for Jake Musga in light of his youth, his lack of significant criminal history, and the facts and circumstances surrounding the charged conduct.

36. I have been advised that Musga's trial attorneys told Musga that he would face a potential death sentence if he did not enter a guilty plea to the charged offenses. It is my firm opinion that this would have been unreasonable and inappropriate legal advice – and I am concerned that these sorts of statements may have unfairly impacted Musga's decision to plead guilty to the charges. As noted above, I do recognize that there was some possibility that the State could attempt to file an amended charge if Musga refused to plead guilty to the charged offenses. I also recognize that defense counsel have an obligation to notify their client of potential risks at trial if the client refuses to accept a proposed plea offer. But it is my opinion that defense counsel must not raise the possibility of a death sentence in a vacuum as if it is part of the plea bargaining process. Instead, trial counsel must have an extended conversation with the client to ensure that the client understands what to reasonably expect at a trial. In this case, counsel would need to explain that the State might attempt to file a charge of aggravated murder at some later date. Counsel would also need to carefully explain that conviction on such an amended charge would carry a sentence of life imprisonment without the possibility of parole or a death sentence. And counsel would also need to explain that it was unlikely – in my view highly unlikely – that the State would ever seek a death sentence in this particular case.

37. Here, given the nature of these charges, defense counsel would need to ensure that Musga had sufficient information to carefully weigh all of these factors before deciding whether to enter a plea of guilty to the charged offenses. Musga would need to understand that the Court could impose a sentence of up to life in prison on Count I. Musga also would need

to understand that he would receive an indeterminate sentence on Count II and that, although the Court would impose a minimum term, conviction on that charge would carry the very real possibility that Musga would remain in prison for the remainder of his life.

38. As noted above, pre-trial preparation is most critical to the defense of any criminal charge. Given the nature of these charges, defense counsel was required to conduct a thorough investigation regarding Musga's life history and background. The documents I have reviewed include no indication that the defense conducted a meaningful pre-trial investigation in this case. In a case of this sort, most attorneys would complete a comprehensive mitigation investigation in an effort to locate information that could be presented to the prosecution during the course of any plea discussions. While it is always hard to predict whether such a presentation would lead to a material change of the prosecution's plea offer in any case, the information from such an investigation would often be very useful for sentencing purposes if the defendant decides to enter a plea of guilty. The documents I have reviewed include no indication that the defense conducted a mitigation investigation in this case.

39. At the close of the change of plea hearing, defense counsel advised the Court: "At some point, Your Honor, we will be presenting – at some point, we are going to present an order, hopefully, agreed to allow an expert into the jail to evaluate Mr. Musga." 9/9/13 Transcript at 11. This statement is surprising to me in numerous respects.

40. First, I do not understand why defense counsel would reveal this type of strategic consideration in open court. In my experience, competent counsel would usually make these sorts of requests in an *ex parte* setting. Moreover, I do not know why defense counsel would need to obtain the prosecutor's agreement to allow an expert to evaluate their client.

41. Second, I am surprised that defense counsel would make such a statement to the sentencing judge before he knew whether such an evaluation could be helpful to his client's case.

42. Third, and perhaps most significantly, I am very surprised that defense counsel would chose to obtain such an evaluation after the defendant had already changed his pleas to guilty. It is my view that competent counsel would want to complete these sorts of evaluations, whenever possible, before the defendant enters a plea of guilty. As noted above (*see* Paragraph 38), this type of information can often be presented to the prosecuting attorney during the plea bargaining process.

43. Apparently, defense counsel arranged to have a forensic psychologist, Dr. Kenneth Muscatel, meet with Jake Musga after he changed his pleas to guilty. The defense included Dr. Muscatel's report as part of the Defense Presentencing Documents that were submitted to the trial court prior to sentencing. The report indicates that Dr. Muscatel evaluated Musga on September 19, 2013, ten days after the plea hearing.

44. I have reviewed Dr. Muscatel's report and it is my opinion that the report very significantly undermined the defense position at sentencing. In fact, although Musga entered pleas of guilty on September 9, 2013, Musga "denied or said he had no recall of hurting the child, and found it upsetting to think the injuries to the child, including possible sexual injuries, were attributable to him." Muscatel Report at Conclusions. At the time of sentencing, the prosecuting attorney made a point to emphasize that Musga had "lied" to Dr. Muscatel. *See* 11/21/13 Tr. 23-24. Thus, relying on Dr. Muscatel's report, the State repeatedly argued that Musga had not accepted responsibility for his own criminal conduct. *See id.* at 37.

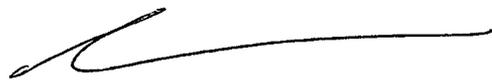
45. Defense counsel filed a document entitled "Defense Presentencing Documents" prior to sentencing. It is my opinion that this filing was deficient in that the defense attorneys presented minimal information regarding Jake Musga and the reasons for the recommended sentence in the case. In fact, defense counsel presented the following statement (and nothing more) in support of the defense sentencing recommendation: "The Court has had the opportunity to review both parties supporting documentation as well as the Certification for Determination of Probable Cause and their respective arguments." This is a non-sequitur as defense counsel presented no arguments in support of the defense position at sentencing. The defense presentation seems particularly inadequate when compared with the presentation in the State's Sentencing Memorandum.

CONCLUSION

46. In conclusion, trial counsels' representation fell below prevailing professional norms as set forth above. My opinions are not a challenge to their general skill as lawyers, nor do they need to be. I have long had the highest respect for the trial lawyers in this case, and continue to hold them in high regard. The deficiencies noted above mean simply that they are human beings who erred, as have all lawyers at one time or another. In this instance, unfortunately, counsels' errors had a significant impact on Jake Musga's case.

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

Dated at Seattle, Washington this 12th day of November, 2014.



TODD MAYBROWN, WSBA #18557

APPENDIX CC

Kim Redford

From: Barbara Corey [barbara@bcoreylaw.com]
Sent: Wednesday, November 19, 2014 8:18 PM
To: Kim Redford
Subject: FW: Your Letter re Jake Musga

Barbara Corey

Attorney at Law
902 South 10th Street
Tacoma, WA 98405
phone: 253-779-0844 fax: 253-272-6439

BARBARA COREY, Attorney at Law, PLLC CONFIDENTIAL COMMUNICATION/ATTORNEY-CLIENT PRIVILEGED. This e-mail is sent by a law firm and may contain information that is PRIVILEGED or CONFIDENTIAL. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately. Further, this email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521, and is legally privileged. This email and any attachments are confidential and protected by attorney client privilege, the work product doctrine or other non-disclosure protection. If you believe that it has been sent to you in error, you may not read, print, disclose, copy, store or disseminate the email or attachments or any information in them. Please reply to the sender noting that you have received the message in error and then delete it. Thank you.

From: Keith Hall <Keith@NewtonandHall.com>
Date: Tuesday, November 4, 2014 4:48 PM
To: Barbara Corey <barbara@bcoreylaw.com>
Subject: Your Letter re Jake Musga

Hi Barbara:

I have been in trial for a few weeks, and just finished yesterday. I have not had a chance to gather the documents you requested. I will start the process, but am wondering if there is something in particular that you are looking for, since your letter noted time sensitivity. If so, I will look for that first.

Keith Hall

Attorney at Law
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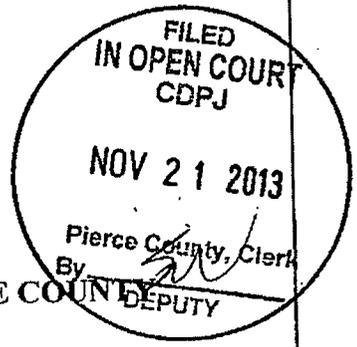
APPENDIX dd



13-1-01369-1 41604617 NOTE 11-22-13 ved By

WORKING COPY TO: Judge Chushcoff
DATE: November 21st, 2013
TIME: 1:30 pm

2013 NOV 19 PM 2:08
Superior Court Administration



IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JAKE JOSEPH MUSGA,

Defendant.

No. 13-1-01369-1

DEFENSE PRESENTENCING
DOCUMENTS

Sentencing Judge: Hon. Bryan Chushcoff
Sentencing Date: Thursday November 21, 2013 at 1:30 p.m.

CHARGES

Mr. Jake Musga was found guilty on September 9, 2013 after voluntarily and knowingly entering pleas of "guilty" to two counts, Count 1, Murder in the First Degree, RCW 9A.32.030(1)(c), with Aggravating Circumstances, RCW 9.94A.535(3)(b) and (c) and in Count 2 to Rape of a Child in the First Degree, RCW 9A.44.083. Mr. Musga has no prior adult felony convictions. Because each count adds two points against the other count, his Offender Score is "2".

On Count 1, the Murder in the First Degree count is a Level XV, Class A, Serious Violent felony with a maximum sentence of Life in prison and/or a \$50,000. fine. On this count the standard sentencing range for an individual with a score of "2" is 261-347 months in custody with 36 months of Community Custody.

DEFENSE PRESENTENCING
DOCUMENTS - 1

KEITH R. HALL, WSBA #35802
NEWTON AND HALL, ATTORNEYS AT LAW, PLLC
610 CENTRAL AVENUE SOUTH
KENT, WA 98032
253-852-6600 FAX 253-852-6800

1 On Count II, the Rape of a Child in the First Degree count is a Level XII, Class A,
2 Violent felony with a maximum sentence of Life in prison and/or a \$50,000.00 fine. On this
3 count the standard sentencing range for an individual with an offender score of "2" is 111 to
4 147 months in custody, however, it is an Indeterminate Sentence offense, pursuant to RCW
5 9.94A.712, where the minimum sentence is the standard sentence range of 111 to 147 months
6 and the maximum is the statutory maximum for the offense, in this case Life in prison. The
7 defendant will be on Lifetime Community Custody when, and if, he is released by the
8 Indeterminate Sentence Review Board.

9 STATE'S RECOMMENDATIONS

10 The State is recommending an exceptional sentence of 720 months to Life, \$500.00
11 CVPA, the \$200.00 filing, the \$100.00 DNA fee, and a restitution amount to be determined at a
12 later date.

13 DEFENSE RECOMMENDATIONS

14 Because he is subject to an Indeterminate Sentence on Count 2, the Defense is
15 recommending the Court sentence Mr. Musga to a mid-range standard range sentence of 300
16 months on Count 1, with credit for any time served, to be served concurrently with Count 2,
17 with credit for time already served, the mandatory \$500 CVPA, \$100 DNA fee, Restitution, if
18 any, to be determined, and Lifetime Community Custody.

19 FACTUAL BASIS FOR DEFENSE RECOMMENDATIONS

20 The Court has had the opportunity to review both parties supporting documentation as well
21 as the Certification for Determination of Probable Cause and their respective arguments.
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CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court adopt the Defense Sentencing Recommendations.

Signed in Kent, Washington, this 18th day of November, 2013

/s/ Keith R. Hall
Keith R. Hall, WSBA #35802
Attorney for Defendant Jake Musga

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November 15, 2013

Honorable Judge: Bryan Chushcoff
Pierce County Superior Court Department 4
Tacoma, WA 98042

RE: Jake Musga
Case No. 13-1-01369-1

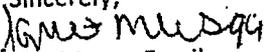
Your Honor,

I am Janet; Jake's Mother, I am here to speak for the Musga Family. Out of respect to Colley and Jones families we chose to have only Mike, Jake's dad, and myself here at the sentencing. But our entire family will always love and support Jake; now and forever.

We the Musga Family send our deepest sympathy and love to Laura, Brandon and both of your families, for the pain that will always be in your heart. To say we are sorry for your loss seems insignificant and wrong, for there is nothing we can say that will ease the pain and heart break you will always have. For this we are truly sorry. We know that if Jake could take your pain upon himself, he would.

This is one of the hardest letters we will ever have to write, for how do you ask for mercy & forgiveness for someone who held a dying child in their arms. As parents we are appalled, as Jake's family we are heartbroken, and as humans we want answers. We want to know why? How could this have happened? How could we have prevented this from happening? There is no answer. Jake has talked to me about this every day for months. And he too does not understand. But Jake is taking full responsibility for Chayson's death. He is extremely remorseful and saddened by his actions. Jake could have gone to trial and maybe gotten off on a technicality, or by a sympathetic jury. Maybe? But he didn't! He did not want any of us to go through the pain that a trial would have caused three families. This has affected us deeply because we are very close loving family. Jake has many older siblings, nieces, nephews, aunts, uncles & cousins that love him, and are also trying to understand what happened, and answer people's questions. Nothing like this has ever happened or should ever have happened to any of our families. We the Musga family would like to say we are extremely sorry; we would like to ask you for forgiveness & mercy for Jake's actions.

Chayson's death has been horrifically tragic for all three families. It has ripped us apart, yet brought us closer. We have been victimized over and over on social media, TV, the local newspapers and radio talk shows. Chayson is a happy little angel, and does not want to see his loved ones get swept up in the scandalized news reports. He wants his memory to be happy not sad. Chayson was a dear, sweet little boy who loved both families very much. May this day bring love, peace and forgiveness to your hearts? But most off all the Musga family prays that God blesses you and brings you some small measure of closure.

Sincerely,

The Musga Family.

Honorable Judge: Bryan Chushcoff
Pierce County Superior Court Department 4
930 Tacoma Avenue S.
Tacoma, WA 98402

Re: Jake Musga

Dear Honorable Judge:

My name is Crystal Jenkin, I am writing this letter to you in order to plea for leniency in handing down Jake Musga's sentence on November 21, 2013. I have known Jake for three years. Jake dated my daughter, and I am also a friend of his mother Janet Musga. Jake and I had a rocky relationship while he dated my daughter over the years. There were times, when I would do everything motherly possible to separate those two, and other times when I have seen Jake at his best.

I feel like I have a pretty good insight, on the person Jake Musga really is. While interacting with Jake through turbulent times, I have witnessed him be a wonderful, generous, determined young man. Jake is very loyal and warm hearted, kind, ambitious and smart. Jake has always been patient and loving with my young son, who was always very excited to see and interact with Jake. I've seen Jake be charming and charismatic towards my daughter.

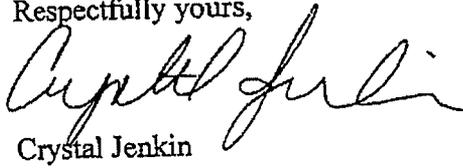
I have also witnessed Jake, be very devoted to his mother, who relied on him for regular assistance with household chores, yard work and errands. Jake would drop what he was doing to help others, without so much as a doubt, for his family, myself, friends and strangers. Jake has volunteered numerous times to help my father with hard physical work. Jake had changed his plans, to help me move for two days, in a one hundred degree weather, for nothing in return. Jake would always help anyone and never ask for anything in return.

I am absolutely heart broken, to hear about the heinous crime Jake has been convicted of. I'm sincerely truly saddened for all people affected by Jakes actions. I'm also relieved to know that Jake has had a spiritual awakening since his incarceration, and is standing up and owning the crime he has committed, the seriousness of his actions, and the behaviors and extreme hurt he has caused for all parties involved. I hope someday the victims and the Lord will forgive him for his sins. I fully realize and understand that Jake needs to, and will, pay the consequences for his crimes.

At the same time I feel like the odds of Jake reforming his life at his young age, with the right rehabilitation is very likely and high. I do not think society would benefit from sending Jake Musga to prison for the rest of his life. It would be detrimental to all concerned. I whole heartedly know Jake knows what he has done wrong, regrets doing what he did, and wants to go forward with his life. If granted the opportunity, I feel Jake will be a productive citizen in society, especially with support from family and friends.

I plea that you please take this letter into consideration, and into your heart. I beg that your ruling on this day, be merciful and not too punitive.

Respectfully yours,

A handwritten signature in cursive script, appearing to read 'Crystal Jenkin', written in black ink.

Crystal Jenkin

Kenneth Muscatel, Ph.D. tel/fax: (206) 324-4443/e-mail: kmuscatel@msn.com
Clinical, Forensic and Neuropsychology 1001 Broadway, Suite 318
Seattle, Washington 98122-4304

Forensic Psychological Evaluation

NAME: Jake Musga
DATE OF BIRTH: 03-05-1994
AGE: 19
PSYCHOLOGICAL TESTS: Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
MARITAL STATUS: Never married
EDUCATION: 11 plus years of high school, no special education, no degree or GED
OCCUPATION: Limited experience in construction, for approximately six months, last worked about a year ago
REFERRED BY: Richard Warner, attorney for Mr. Musga
DATE OF EXAMINATION: 09-19-2013
DATE OF REPORT: 11-8-2013
CAUSE NUMBER: 13-1-50500-0

REASON FOR REFERRAL:

Mr. Musga was referred for a psychological evaluation to determine his current mental state and his likely mental state at the time of the alleged offense. It is alleged that Mr. Musga on March 30, 2013, did commit murder in the first degree and rape of a child in the first degree, a child in his care at the time. The child was two years old at the time of this alleged incident.

PSYCHOLOGICAL TEST RESULTS:

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) was administered to Mr. Musga at the Pierce County Jail. The results of the tests were fairly remarkable for the lack of presentation of psychological symptoms and complaints. The Wiggins Social Desirability Scale was at 77, an elevated result that indicated Mr. Musga was attempting to portray himself in a socially appropriate and desirable manner, rather than trying to emphasize the presence of psychological problems and complaints. The validity scales on the MMPI-2 were all within normal limits, the only elevation being on scale K, which was at T-score 62, somewhat elevated but still within normal limits. The only near-elevation in the clinical scales was on scale 4, commonly seen in behavioral and characterological/personality disorders. A closer view of the elevation on scale 4 determined that he had a significant elevation on the subscale "Authority

/

Problems," at T-score 74, but none of the other scales demonstrated significant elevation. In fact, given the dire circumstances of Mr. Musga's current charges this MMPI-2 is all the more remarkable because there is no evidence of depression, subjective distress, social withdrawal, or feelings of isolation or alienation.

Based upon the clinical picture portrayed on this MMPI-2 appeared to be largely absent of serious psychopathology. Despite the current circumstances, Mr. Musga, is not depressed or even particularly anxious. Although he tends to be somewhat defended from a psychological standpoint, his capacity for insight and psychological sophistication appears to be adequate, certainly for the circumstances of this test. The only other element of note on the MMPI-2 responses was on the Content scales, in which there was a significant elevation on the "Anger" factor, at T-score 78. That is a significant elevation, but I noted it was not sustained across the wider range of responses on the clinical scales of the MMPI-2. Ego strength is well intact, and Mr. Musga does not appear overwhelmed or unduly distressed by his current circumstances, either anxiety or depression. The MacAndrew's Alcoholism Scale was a T-score 69, a mild elevation suggesting that he does in fact have problems in his use of alcohol (hardly surprising given the circumstances of the current charges). He also was elevated on the scale of "Addiction Potential" in which he had a T-score of 73, again not surprising given the information garnered in both the interview and in the police reports about his history and behavior. Otherwise, the MMPI-2 does not suggest the presence of a major mental disorder or even a major behavioral disturbance, including personality functions and the like.

BEHAVIORAL OBSERVATIONS AND INTERVIEW:

I interviewed Mr. Musga in an interview room at the Pierce County Jail. Mr. Musga was friendly and affable, and relatively relaxed, somewhat surprising given the circumstances in which the interview was conducted, as well as the charges that he faced.

Mr. Musga was fully aware of those charges and the potential penalty for this alleged offense, which would include several decades in prison.

Mr. Musga indicated that he was only out of high school for a couple years at the time of this incident, but had problems in the past with both heroin and to a lesser extent, alcohol. He had been through treatment twice at Olalla Treatment Centers, most recently in January 2013. It is there he met his girlfriend, the mother of the decedent child who was the victim in this crime. Mr. Musga indicated he has six months of work experience working in construction, his last work coming about a year ago. He worked on residential construction. I asked about how he supported himself since his last job and he said he had just moved

to Tacoma and his girlfriend was the leasing agent for an apartment building and they were living there for free. He said they had been there for only a month at the time of the alleged offense. He said he did not have any formal job during that period, and they survived through the proceeds of her job and food stamps. As noted, they met at the substance abuse treatment center (Olalla) around the end of December 2012. The incident occurred on March 29th and/or 30th, 2013.

Mr. Musga indicated he had been arrested in the past but had only been in jail for a week on the violation of a no-contact order. He also has a pending charge in Snohomish County for theft of a firearm, which currently is not adjudicated and which he is hoping to get dropped. He denied any juvenile institutional incarceration. I asked Mr. Musga about his pattern of alcohol and drug abuse. He insisted that he never was a big drinker, in part because when he drinks he does not remember anything. The treatment at Olalla was primarily for his heroin abuse. He was treated there twice, in July 2011 and in December 2012.

He indicated he started smoking marijuana and drinking in the seventh grade, at approximately 13 years of age. He said he just drank a little bit but by the eighth grade was starting to smoke OxyContin, an opiate pain medication, and noted that he was doing this activity with "an older crowd." He said he "mellowed out" for a couple years, playing football in his sophomore year but at that time started to get into Percocet abuse and then heroin. He indicated he never used heroin IV, only ingesting heroin by smoking it. He said he started using heroin when he was 17 years of age, the same year that he dropped out of high school. (He was a senior in high school at the time.) He said he generally drank alcohol only 10 times a year or so, either beer or hard liquor, estimating that he drank each about half the time. He did have blackouts in the past, noting this is what happened on the night of the current incident. Prior to that he said he only had blackouts two or three times, usually at parties. He would drink and then wake up in a room at the party, with no idea what happened. I asked if he drank and used heroin at the same time, he said only a few times, but mostly he would do just one or the other.

I asked Mr. Musga if he had any mental health history and he said he was "a little bipolar" and was given Wellbutrin when he was 16 years old, but only took it for about a month. Otherwise, he never took any mental health medications. I asked if he saw a mental health practitioner during that time or at any other time, and he said around that time he saw a woman but just talked to her twice and did not go back. Again, this was when he was 16 years old and still in high school. He denied any suicidal thoughts, feelings, intents, or plans, and denied that he ever tried to hurt himself.

I asked Mr. Musga about any history of violent behavior in the past. He said as a juvenile he had been arrested for assault in the fourth degree, but the charge was dropped after he attended a two-hour class in anger management. He was only 12 or 13 years old at the time. He denied any other violent behavior in the past, prior to this current period. Mr. Musga and I discussed his use of alcohol where he indicated that he has had hangovers in the past, particularly after he turned 18 years of age. I asked about alcohol-related blackouts, and he indicated that it depended on how much he drank, but these events would happen perhaps twice a year; however, nothing bizarre or truly unusual would occur during those events. He denied having a DUI in the past. He has attended AA while going to Olalla and, as previously noted, he has been treated twice at Olalla for substance abuse. He has been to NA outside of treatment but not AA outside of the treatment setting. When he went to NA, he said that he was sober for 130 days, from July 2011, after his first stint at Olalla, through the next four plus months. He indicated he was going to NA three times a week during that period.

With regard to his family history, Mr. Musga indicated his father had him and four other kids, but he is his mother's only child. His mother and father are no longer together, and he was 10 years old when they were divorced. I asked about violence in the household, and he said his parents would fight a lot, and sometimes his dad would throw things at his mother, largely because he was an alcoholic, but there was never any hitting. He denied any history of sexual, physical, or emotional abuse from his family, but noted in grade school he did not have a lot of friends because he was a "chunky kid" and was teased a lot. However, this changed in middle school when his body changed.

In the mental status examination, Mr. Musga denied auditory hallucinations, although he indicated that he sometimes heard a voice that was clearly his own thoughts at times. He indicated he did have visual hallucinations when he was drinking, but never when he was sober. He denied any paranoid or delusional thoughts or feelings. I asked about mood lability, and he indicated, "Yes, very much. If I'm happy, I'm really happy. If I'm sad, I'm really sad." He also indicated that he was prone to getting angry and irritated easily, and then also indicated that he got frustrated very easily, but it took a lot for him to act out on those feelings of frustration.

Mr. Musga played football in high school, playing on the defensive line and also played arena football as a linebacker. He said in football in his senior year, he had six personal fouls, but generally kept his temper under control during games. It is noted that Mr. Musga was kicked out of school his senior year and missed the last two games of the season. I asked Mr. Musga if he had taken steroids, and he indicated that he did try steroids during his junior year, and

taking two six-week cycles of steroids to build his body up. It is noted that he was at that time six foot two and weighed about 200 pounds.

I asked Mr. Musga if he was a patient individual, or if his irritability and tendency to get frustrated affected his tendency to get angry. He said it really depended, sometimes he has patience and sometimes he does not. He cited an example in jail where another inmate said that he wrote a "kite" and this got passed around, and he got upset. I asked if he had a lot of fights in the past, and he said he had a few fights when he was thirteen years old and in fact was stabbed once when he was at church. He said his frequency of fighting at school was only about once a year. In the stabbing, he was cut with a razor knife above the left eye. He was seventeen years old at the time.

I discussed with Mr. Musga the incident when he assaulted and actually stabbed above the eye when he was twelve years old. An email from Mr. Warner confirmed that Mr. Musga was assaulted at the age of twelve and spent several days in the hospital with a concussion. He said he was assaulted by a couple older boys, one who had brass knuckles and hit Jake over the eye. His head was backed up to a brick wall so that there was no room for his head to move, to better absorb the blows. Further documentation of this injury was not available, but it seems likely that he was in the hospital for a least a day or two due to a concussion. It is noted in this email that his mother and Jake both confirmed he began smoking pot and by the eighth grade was using heroin, although he smoked the heroin rather than engage in IV use.

I asked Mr. Musga if he had ever engaged in domestic violence, and he said, "Not at all." He said he had been around children many times and had babysat in the past.

I asked about the month of this incident, which was March, 2013. Mr. Musga said he used heroin when he got out of treatment, but only two times. He said this was his girlfriend's idea (the mother of the child), so they would both be getting high together. I asked about his use of alcohol during that period, and he said that they were drinking, noting that they bought a fifth of Burnett's (hard liquor). In fact, he said that he had finished the bottle off the night of the incident. With regard to his use of heroin, he said it was earlier in the month of March, and not near the night of the incident, which I have noted was March 30, 2013. He said he drank every once in a while, mostly every weekend, having a drink with Laura ("Lo"), the child's mother and his girlfriend. He said the night of the incident, the bottle was already two-thirds consumed, and he finished off the last third that night. With regard to the span of time in which he consumed the last third of the bottle (which I would estimate to be between eight and nine ounces of hard liquor) was probably four hours, by his estimate.

I asked Mr. Musga what was happening that day. Lo is five years older than Mr. Musga and her birthday was the next day. She went out with her sister to a bar in Elma, which Mr. Musga could not attend because he was not 21 years of age. He said Laura asked him to stay home and watch her son, Chayson. He was 2 years old at the time. Mr. Musga said earlier in the day he took Chayson to the park for a half hour, and then returned to the apartment to watch movies. While she was out, he said he called Laura a couple times to see how she was doing.

Mr. Musga indicated at 7 p.m. he started drinking the Burnett's liquor and some sort of soda, probably Pepsi. He said from that point on his memory of events became cloudier.

I asked what Mr. Musga did recall, and he said he remembered catching Chayson drinking out of his glass of alcohol. He said he went to the bathroom and saw him drinking out of his glass. He said "me being a drunken idiot," I gave him a little bit in a "sippy" cup and he drank some more. He said later that night Chayson threw up.

He said later on he remembered Chayson falling off the couch, indicating he fell straightforward onto his head. He said a little later the boy threw up and he took him into the shower to clean the child up.

He said a little later that night he called Laura, asking her how her night was going. This was around midnight. By that time, she had come back to her parents' home. She talked to her son briefly on the phone, he said.

He said he remembered trying to put Chayson to sleep later that night, but the boy would not fall asleep, so he let him stay up and watch movies with him (Mr. Musga) for a half hour and then put him back to bed.

Mr. Musga said the boy would not fall asleep, so he put the boy with him in the bed that he and Laura shared. He said he fell asleep until he heard a thud, and when he looked over he saw the boy was on the floor. He noted that the bed was high, about three feet off the ground. He said he picked up Chayson and put him on the bed, and he said the boy initially seemed fine; however, after 5 or 10 minutes, he realized the boy was not breathing. He took him out into the living room and tried to give him CPR, but Chayson still was not breathing, so he took him in his arms and ran down the stairs to the lobby of the apartment complex. He was trying to use the phone to call 911. Down in the lobby he saw a man and threw him the phone, telling him to call 911. They were on the phone, giving him instructions for CPR. He said about five minutes later the fire department

came and at that point took over the resuscitation efforts. The police arrived and took him to the station, where he said they interviewed him for eight hours.

I asked Mr. Musga how drunk he was at the time when he spoke to the police. He said he was still drunk, but the events that transpired were definitely "a sobering experience." He said the police never gave him a breathalyzer and never took a blood sample, even though he told them he had been drinking. He said they were very focused on Chayson and were not concerned about his under-age drinking. He was aware that the statement was being recorded. I asked Mr. Musga if the information that he provided to me was the same or different from what he told the police and he replied that it was about the same as far as he knew.

I asked Mr. Musga if he was fully aware of the allegations and he said that he was, but did not believe it at first and was going to fight it "for the longest time." I asked if this was hard for him to believe, and he said, "Yes, I've never been that kind of person in my entire life." He noted that, "Now, they're trying to give me 60 years."

REVIEW OF RECORDS:

In the Discovery, it was noted that Mr. Musga had called 911 at about four in the morning on 03-30-13 concerning a 2-year-old child who was having difficulty breathing. The child, Chayson Colley, was not breathing and was transported to Mary Bridge Hospital. Mr. Musga was detained by police after being identified as the boyfriend of Chayson's mother, Laura Colley, who was not at the scene.

It is indicated that Chayson was in shock, and his condition was very bad. His condition was initially described as critical and stable, but he suffered a number of injuries, including visible bruises all over his body, including behind his ears, and there were two brain hemorrhages, rectal bleeding, a collapsed lung, and damage to the pancreas, and he was unresponsive. They also learned that Chayson Colley had a blood alcohol level of 0.124, and more than three hours later, he was declared deceased.

It is noted that a witness was outside the Commencement Terrace Apartments when he saw a man with a small child in the lobby of the building. The man, later identified as Jake Musga, and appeared to be performing CPR on the child. He also had a telephone in hand. This witness, Mr. Saldavia, signaled Mr. Musga to let him into the building, at which time Mr. Saldavia took the phone and called 911. He said that when he first saw Mr. Musga, it looked like he was trying to make a call. Mr. Saldavia said the child was wearing only a diaper, and he could see numerous bruises on the child.

In the preliminary statement by the arresting officer for probable cause dated 03-30-13, signed by Officer Nist, it was noted that the child was found to have bruises from head to toe, two brain bleeds, and abdominal bleeding. In addition, the child had an alcohol content of 0.124. It was indicated that Dr. Blake, the examining physician, believed there was a clear signs of abuse. It is noted in this document that Mr. Musga was interviewed and attributed the injuries to the child's behavior. Mr. Musga indicated the child was very rambunctious and fell a lot. Mr. Musga said the child had to be held down on Thursday evening, March 28th, in order to brush his teeth. During that time, the child fell, hitting his head on the floor. Mr. Musga also indicated on Friday evening, the night of the incident which extended into the early morning hours of March 30, the child fell in the shower.

I reviewed Mr. Musga's thirty seven page statement to the police following his arrest. He noted that he had made mistakes in his life, but he would never hit a child and said he had never even been in a fistfight. He said that playing football was the most contact he had ever had with another person. He also noted that he wanted to personally talk to the doctor to find out what the injuries really were (as if he didn't believe it), because he still did not understand what had happened. He indicated that the bruises to Chayson were from hitting his head, although he also indicated that the alcohol would have had to been spoon fed to Chayson, which he did not do. He did note that he was careful about restricting access to his drink. He denied intentionally injuring Chayson in any way. He also indicated he believed the bruises on his body were from past events, but the head injury occurred when he fell out of bed that night. He admitted that it was his fault the child had got a hold of the alcohol, and he took responsibility for leaving the alcohol open and available in his glass, unattended so Chayson had access to it; however, he denied intentionally or willingly injuring the child. He reiterated that he was not a violent person and never touched or injured Chayson inappropriately.

Review of records also confirmed that Laura Colley, mother of Chayson, had significant and serious drug abuse problems. Ms. Colley indicated that she got a call from Jake Musga around 3 a.m. on March 30, and Jake told her Chayson "still was not breathing very well." Laura said she told Jake she would be home in the morning to take Chayson to the doctor. Laura said her parents did not wake her up and she slept until noon. The witness, Brandon Jones, indicated Laura did not go into any detail about Chayson's breathing. Brannon did indicate in a statement to the police that he believed Laura was capable of hurting Chayson, especially if she was high on drugs, noting she would get "pretty rowdy" and even saw her attack her sister once.

In the medical records and in search warrant/affidavit, it was noted that Chayson had bruises all over his body. Alcohol, in particular vodka, was found in containers and cups. It was alleged objects were used to insert into the rectum and were tainted with blood and/or fecal matter on those objects. (Later lab results found no evidence of semen or the defendant's DNA). Narcotics were found at the scene, including opiates and methamphetamine. The documents quoted Dr. Blake, as indicated, that when the child arrived at the ER at Mary Bridge Hospital he was in critical condition with numerous old and new bruises all over his body. His eyes were fixed and dilated, and he was suffering from internal bleeding and a collapsed lung. He had rectal bleeding and an elevated level alcohol in his system. In search warrant/affidavit it was alleged the rectal bleeding was likely caused by physical abuse, and that the injuries were so severe the child would not likely survive. Dr. Blake ruled out the cause of injuries as non-accidental and raising substantial concerns about physical abuse.

As noted earlier, Mr. Musga indicated Chayson had fallen off the bed on several occasions, all of which were accidental. He indicated that vodka was present in the residence and used for personal consumption and he used a cup to drink, and it was possible Chayson got into that cup when he briefly left the room. He also indicated that Laura, the child's mother, noticed the bruises on Chayson in the past and had made statements that they should not take the child out into public because of those visible injuries, implying that the injuries were accidental and were the result of falling. Mr. Musga indicated that the drugs he and Lo used included opiates and methamphetamine (respectively), and he had met Ms. Colley at a drug treatment center where they were both recovering addicts.

I reviewed two documents from Olalla Recovery Center, the first document indicating Mr. Musga was admitted to the facility on 07-09-12 and discharged on 07-30-12. In the first inpatient treatment that he underwent, he was diagnosed with opioid dependence, cannabis dependence, cocaine dependence, and nicotine dependence. It was noted he willingly participated in treatment. He appeared to be engaged in the treatment process and open to both giving and receiving positive feedback during process groups. It was recommended that he have continuing care, including attendance with Narcotics Anonymous (NA).

In the clinical history, it was noted that Mr. Musga started using alcohol at age 13, when he was drinking up to 30 times a month, consuming a six-pack of beer per each use. Mr. Musga indicated at 15, he started drinking occasionally, consuming a half of a fifth of hard liquor per instance. He stated prior to entering treatment that his last use of alcohol was 06-10-12. He used sedatives such as benzodiazepines, and began using marijuana at age 13 and experimenting with heroin at age 17. The patient said he was smoking heroin daily, in the amount of one gram per use, and stated his last use of heroin was

07-01-12, and it is noted this was only about a week before he entered treatment. He first used cocaine at age 16, indicating he was snorting and smoking it three times a week, about a gram per use, and last used cocaine in May 2012. His first use of crack/rock cocaine was at age 18, but said he only smoked it one time, but that was only a month before he entered treatment. He first used OxyContin when he was 15 years of age, smoking it daily, but had not used it since 2010. He also used hallucinogenics, and it was noted he started smoking cigarettes at age 13. The initial diagnostic assessment was alcohol dependence, sedative, hypnotic, anxiolytic abuse, amphetamine dependence, opioid dependence, cannabis dependence, hallucinogen abuse, and both nicotine dependence and caffeine intoxication.

His second stint at Olalla was from 12-29-12 through 01-16-13. The diagnoses remained the same. He was voluntarily admitted to the 28-day inpatient recovery program for chemical dependency and completed 18 of those days of residential inpatient treatment when he was involved in an argument with another male patient, and discharged from the facility for his own safety. It was indicated he would be allowed to readmit after 30 days, but this never occurred. The clinical history was the same as in the prior documented treatment course at Olalla (described above).

I was provided the Statement of Defendant on Plea of Guilty to Sex Offense, and Statement of Defendant on Plea of Guilty to Non-Sex Offense, both endorsed by Mr. Musga that include handwritten statements by him concerning the offense against Chayson that resulted in his assault and the death of the child. In the former statement he indicated he feloniously engaged in sexual intercourse with his girlfriend's son (Chayson), indicated he had been drinking a lot, lost his temper after the boy urinated on him when he was changing the child's diaper and intentionally put her finger in the rectum of the child. He indicated he could not resist because of the child's age. In the latter statement, he endorsed losing his temper after heavy drinking and after the boy urinated on him while he was changing the child's diaper, so picked the boy up and "slammed him on the floor". When he did not stop crying he put his finger into the rectum of child. Both acts were conducted at the same time

CONCLUSIONS

In our interview Mr. Musga denied or said he had no recall of hurting this child, and found it upsetting to think the injuries to the child, including possible sexual injuries, were attributable to him. This is not what he endorsed on the statements of guilt to the non-sex and sex offenses, suggesting his actions were made out of frustration and impulsive anger.

In the statements of guilt and our interview he indicated he was highly intoxicated at the time of the incident, by his own admission and the evidence of the case, as well as the victim (aged only two), who was found to have a highly elevated blood alcohol level. The idea of putting alcohol in a "sippy cup" is remarkably bad but likely reflects his idiosyncratic thinking and immature, impulsive judgment.

Mr. Musga has been the subject of assault and attack himself, suffered when he was only twelve years of age. He has a lengthy history of heroin abuse, with alcohol a secondary drug but the primary drug of abuse in this incident. He had recently got out of treatment, where he met the child's mother, and was left to babysit a two year old while the mom was gone overnight, celebrating her birthday. Mr. Musga has had little in the way of a successful work history, his life as an adult barely started at the time of this incident.

There is no indication of major mental disorders, aside from chronic substance abuse and immature, distorted personal function. He has had problems in the past with figures of authority, and is not particularly anxious or depressed, remarkable given the very severe nature of the current charge and the likely incarceration he will face. In a very real sense, the full implication of the incident and the criminal justice consequences hasn't fully hit him.

Mr. Musga did express remorse and dismay at the allegations, but indicated he did not recall any of the alleged abuses the child must have suffered. This was likely due to his level of alcohol intoxication, but perhaps it is something he cannot face and blocked out of his memory. What he does recall is essentially incompetent child care, with the toddler falling off the bed and earlier, giving the child a little alcohol to drink after he said he caught him drinking out of a glass of alcohol Mr. Musga left unattended and then putting some in the child's cup. While this would make him criminal culpable to some degree, it is the alleged allegations of intentional abuse resulting in the death of the child that Mr. Musga faces. He asserted in the police interview and to me that he has no recall of doing that (aside from the alcohol). Thus, the alleged assault could not be explored by me in our examination, as he was not a witness to his own actions. If the child's injuries really were from accidental events, then Mr. Musga's lack of recollection would be expected. However, given his impaired mental state that night, with his lack of recall of events that are assumed to have been committed by him, he cannot tell this examiner anything about his thoughts, feelings, perceptions or decision-making when these putative events occurred.

The only likely explanation is that his substantial level of intoxication, immaturity, frustration and poor impulse control all contributed to the events that night. He may have mild post-traumatic stress symptoms and chronic mild

cognitive difficulties secondary to the assault when he was twelve. His lack of judgment is most notable; as it was evident he could not anticipate a common difficulty when it occurred (the child urinating on him during the diaper change) and lacked the coping skills to deal with sudden frustration when the little boy started to cry and would not stop. It appears the combination of the first incident (the urination) and the second incident, in which the child would not stop crying, resulted in the episode of impulsive, dyscontrolled violence. His underlying immaturity, ineffective internal controls, and poor judgment and emotional instability, combined with the effects of alcohol, are the reasons this tragedy ensued.

The years of opioid and alcohol abuse have likely impacted his thinking, judgment and emotional stability as well. He suggested he had bipolar symptoms, endorsing mood lability, easy irritability, and low frustration tolerance, all hallmarks of a mood disorder. The abuse of drugs and alcohol by someone with a Bipolar Illness is common, and Bipolar Illness may have played a significant role in his actions that night. Given his history and background this seems very likely, but his lack of recollection of specific acts that night, and the limited findings on the psychological testing, make Bipolar Disorder only a hypothesis to consider, but cannot be confirmed at this point.

Diagnosis (DSM-V)

Axis 1: Alcohol Dependence - moderate to severe (303.90)

Opioid Use Disorder - severe (304.00)

Axis 2: Personality Disorder, Unspecified (301.9)

Axis 3: History of concussion

Axis 4: Serious criminal justice stresses, unemployment stress, financial stresses

Axis 5: GAF scale- Moderate mental health symptoms (55)

Thank you for this referral.

Kenneth Muscatel, Ph.D.
Clinical, Forensic and
Neuropsychology

APPENDIX ee

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

STATE OF WASHINGTON,)	
)	
)	
Plaintiff,)	
)	
vs.)	No. 13-1-01369-1
)	
)	
JAKE MUSGA,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 21st day of November, 2013, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

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APPEARANCES

On Behalf of Plaintiff(s): ANGELICA WILLIAMS
JARED AUSSERER
Deputy Prosecuting Attorneys

On Behalf of Defendant(s): RICHARD L. WARNER
KEITH R. HALL
Attorneys at Law

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INDEX

PAGE

Sentencing

4

1 MS. WILLIAMS: This is the State of Washington v.
2 Musga, cause number 13-1-01369-1. Angelica Williams
3 and Jared Ausserer on behalf of the State.

4 The defendant will be present shortly. He is
5 being brought in through the back.

6 MR. WARNER: Your Honor, Richard Warner and
7 Keith Hall on behalf of Mr. Jake Musga, who is now
8 seated on the court's far left, to my right.

9 Before we proceed with the sentencing proceeding,
10 the defense would be objecting to the State's
11 PowerPoint demonstration being posted on a wall.

12 THE COURT: Just a second. Just so it is clear
13 for the record, Mr. Musga has joined us.

14 Go right ahead.

15 MR. WARNER: We would be objecting to the
16 PowerPoint. This sentencing would be addressed to the
17 court. The court is the one that sentences this. This
18 is just playing up to the press, who is also present in
19 the audience. Even the victim's family -- some of the
20 family are very concerned about seeing some of the
21 photographs. There is no need -- if the general public
22 needs to, obviously, they could, but we are asking that
23 it would be addressed to the court just as the
24 defendant, if he were to address the court -- and we
25 expect that he will -- would be addressed to yourself

1 and not turning and playing to the audience.

2 We would be objecting to the PowerPoint. The
3 State has given us copies of the PowerPoint, and I
4 believe that will be sufficient for the court to make a
5 fair and just sentencing in this matter.

6 MS. WILLIAMS: Your Honor, it is entirely the
7 Court's discretion. It is entirely appropriate for the
8 State to present a PowerPoint at sentencing as a
9 standard practice for many DPAs at trials or after a
10 plea. It is a contested sentence, the State seeking an
11 exceptional sentence on this case. We are not playing
12 or pandering to the press. In fact, I would ask that
13 the press not photograph the PowerPoint presentation
14 that the State is going to present. It's the most
15 effective and persuasive means the State has to
16 persuade this court that the State's position is the
17 right position.

18 While there are several members of the victim's
19 family who do not wish for a PowerPoint presentation to
20 be presented, there are a number of the victim's family
21 members who do wish for that to happen because they
22 also believe that it is the appropriate thing to do in
23 terms of seeking an exceptional sentence. It is
24 entirely within the court's discretion. There is no
25 authority that says one way or the other whether or not

1 the State is not permitted to do this.

2 Based on that, Your Honor, the State would ask
3 that the court allow the State to present the most
4 persuasive and proper way for this young victim.

5 THE COURT: Well, the Rules of Evidence strictly
6 speaking don't apply to this proceeding. It seems to
7 me that the State is entitled to make their case as
8 they would like to. This is not like an Evidence
9 Rule 403 kind of an issue. I am not going to limit
10 what their presentation is unless there is something
11 specifically objectionable as it may come up. I will
12 let them proceed with that.

13 I'm not going to try to limit the press or anybody
14 else from viewing the PowerPoint. That is entirely up
15 to anybody who happens to be present. If they find
16 this difficult, and I could imagine some might, they
17 can certainly choose to come and go during those
18 portions of the proceedings or avert their eyes.

19 If you could please be seated.

20 I guess I should state a couple of things: One is
21 that I have received a Presentence Investigation Report
22 with respect to this matter, signed by Mr. Sofia.

23 Did the parties each receive that?

24 MR. WARNER: The defense did, Your Honor.

25 MS. WILLIAMS: We have, Your Honor.

1 THE COURT: Is there any exception, correction,
2 modification that anybody wishes to make with respect
3 to that?

4 MS. WILLIAMS: Not from the State, Your Honor.

5 MR. WARNER: Not from the defense perspective.

6 THE COURT: There was, I thought, perhaps a
7 typographical error.

8 MR. WARNER: What page?

9 THE COURT: If I can find it again quickly, Page
10 13 of 15.

11 MR. WARNER: Paragraph?

12 THE COURT: Very top page, second line. It said,
13 that was the only time that he was never treated. I
14 take it the word was "ever."

15 MR. WARNER: I think it should be "ever," yes.

16 THE COURT: So, I'm going to scratch that "N" out
17 of that and put my initials next to that.

18 Any other changes or corrections that anybody
19 wishes to make about this?

20 MS. WILLIAMS: Not from the State, Your Honor.

21 MR. WARNER: Not from the defense, Your Honor.

22 THE COURT: I have also received State's
23 sentencing memorandum. I have also received a number
24 of victim impact statements. The most recent one I
25 received was this morning. It was dated November 19th.

1 I'm not sure why it wasn't provided sooner, but I
2 didn't see that until this morning. It's signed from
3 Mr. James M. Jones, great-grandfather to Chayson it
4 says. I don't know if defense counsel has seen that.
5 I assume that you have seen the other ones.

6 MR. WARNER: We do have that, Your Honor.

7 THE COURT: I have also received defense
8 presentencing documents, which includes a memo from the
9 defense, a forensic psychological evaluation from
10 Dr. Muscatel. There were a couple of letters of
11 support, as well, from family members.

12 MR. WARNER: Correct, Your Honor.

13 THE COURT: I think that is all that I have
14 received in connection with the sentencing.

15 Does everybody have all of those documents? We
16 are all on the same page here?

17 MR. WARNER: Yes, Your Honor.

18 THE COURT: Then I will let the State proceed, I
19 guess.

20 MS. WILLIAMS: Your Honor, before the State gives
21 its sentencing recommendations, there are a number of
22 family member that wish to address the court, first
23 being Chayson's maternal grandmother, Cathy Colley, if
24 that procedure is acceptable, the families to address
25 the court first.

1 THE COURT: That's fine.

2 Please come on forward, ma'am. Come forward to
3 where this microphone is. Can you see this right here?
4 Come forward to right about there. There you go.

5 Please state your name, and please spell your
6 name.

7 MS. COLLEY: My name is Cathy Colley. C-A-T-H-Y
8 C-O-L-L-E-Y.

9 THE COURT: Ms. Colley, what would you like to
10 tell me with respect to sentencing.

11 By the way, to the extent -- this is for
12 everybody's purpose. To the extent that anybody has
13 provided victim's statements, I have read them all.

14 Proceed.

15 MS. COLLEY: We are here today to seek justice for
16 my grandson, Chayson Troy Colley, and ask you to hand
17 down a sentence to Jake Musga that is fair and just.

18 On the cover of May's issue of National Geographic
19 Magazine, there was a photo of a baby boy not much
20 younger than Chayson when he died. The headline read:
21 "This baby will live to be 120." My father's father
22 lived to be 99. My mother's mother lived to be 96. I
23 believe Chayson would have easily lived to be at least
24 122 as he was above average, a superstar from birth.
25 That means that was taken from us is at least 120

1 years.

2 I was told that the prosecutors were going to
3 request that Jake serve an exceptional sentence, a life
4 sentence, of 60-plus years. Each of the charges that
5 Jake has pled guilty to could carry a life-term of
6 60 years. Asking for 120 seems just.

7 In the Old Testament, when a life was taken even
8 on accident, the offender was sent to a city of refuge
9 to spend the rest of their lives. Jake's city of
10 refuge shall be a Washington state prison where I
11 believe he should stay for the rest of his life.

12 What was taken from us was the star of our family.
13 Chayson was my daughter's only child, our only
14 grandson, all of our parents' only great-grandchild.
15 Nothing could ever replace him. We will miss him every
16 day of the rest of our lives. We grieve. We grieve.
17 We have felt -- the grief we have felt is beyond
18 anything that we could have ever known or could ever
19 have imagined. We have all been given a life sentence.
20 It seems only fair that Jake should serve one as well.
21 We all have experienced our greatest betrayal possible.
22 We all trusted Jake. He appeared to be a man mature
23 beyond his years who loved my daughter and Chayson. I
24 believe his love may have been genuine, but somehow he
25 allowed his soul to do horrible things that fateful

1 night that caused him to brutally take Chayson's life.
2 I still can't comprehend how Jake Musga that I thought
3 I knew did this. Those actions must be punished.

4 If Jake has asked forgiveness, and I believe he
5 may have, from God, God has forgiven him. I also
6 believe that Chayson has forgiven him for he is in
7 heaven and will never again know sorrow or pain. I
8 believe God has called us to forgive him, too, but
9 justice still must be served.

10 In Micah 6:8, it says: What will the Lord require
11 of you? To act justly, to love mercy, and walk humbly
12 with your God.

13 Your Honor, I ask -- your task will be determine
14 what is just and dispense that justice today. I pray
15 that you will do so with the love of mercy and do so
16 with the humility on your heart. So what is fair and
17 just? 120 years of Chayson's life on earth has been
18 taken. Asking for a sentence that long seems just.
19 May Jake spend those years serving God with all of his
20 might.

21 I'm sorry that you have to look at the photos of
22 what was done to Chayson. I'm very sorry for that. It
23 has been probably one of the most difficult parts of
24 your task. As you look at those photos, you will see
25 why an exceptional sentence is justified in this case.

1 I also ask that, after looking at the photos, that
2 you will see that it's unnecessary for the rest of us
3 here today to see these photos, and prevent them to be
4 shown to anyone else. Please lock them from being seen
5 by the media or anyone else because it is alone your
6 decision. I believe that's what Chayson would want. I
7 also believe the sentence of 120 years would be fair.
8 Thank you.

9 THE COURT: Thank you.

10 I will address your issue with respect to the
11 media. As I indicated, this is a public hearing. They
12 are entitled to be here. They are entitled to see what
13 is presented to the court. I understand this may be
14 difficult for the family, but that's the nature of the
15 process, I'm afraid.

16 MS. COLLEY: Thank you for addressing that.

17 MS. WILLIAMS: Your Honor, the next person who
18 wishes to address the court is the biological father,
19 Brian Jones, who is going to be accompanied by his
20 parents, who aren't going to address the court.

21 THE COURT: Okay, please come forward. Please
22 state your name, and please spell your name.

23 MS. JONES: My name is Bobbye Jones.

24 THE COURT: Ms. Jones, would you please spell your
25 name?

1 MS. JONES: B-O-B-B-Y-E. J-O-N-E-S.

2 THE COURT: Thank you.

3 MR. JONES: Ron Jones.

4 THE COURT: R-O-N, I take it.

5 MR. JONES: Brannon Jones, B-R-A-N-N-O-N.

6 THE COURT: Okay, thank you.

7 Ms. Jones.

8 MS. JONES: This is hard. It is with a heavy
9 heart that we address you today in regards to the
10 sentencing of Jake Musga. Our family has suffered a
11 tremendous loss of our beautiful two-year-old grandson,
12 Chayson. I wanted to share today what the extent of
13 our loss without Chayson in our lives is. He was a
14 vibrant two-year-old that loved to play with his trucks
15 and his three cousins.

16 Chayson and Benjamin were best friends and were
17 just building a bond that should have lasted a
18 lifetime. He had a love of running and had a laugh
19 that made you giggle every time you heard it. He was
20 mischievous, but loving. He enjoyed carving pumpkins,
21 slides, and literally being a daredevil. He was
22 curious about everything and thought that he was He-Man
23 as he picked everything up just to see if he could. He
24 loved his two baby cousins, Owen and Kingston, and
25 would provide them with hugs and kisses. "Baby" was

1 one of the first words we heard him say.

2 We should be sharing their birthdays, which is now
3 celebrated with a heavy heart because we know there is
4 one missing. Each and every holiday now brings a level
5 of grief because we will always be missing our
6 grandson. There is no closure when you lose a child.
7 The grief and suffering that you feel eases with time,
8 but you never forget such a terrible loss. You are
9 always reminded of what a beautiful child he was. We
10 should be sharing his graduation, getting married, and
11 having his first times, but Jake took that away.

12 Chayson was innocent, without the ability to tell
13 someone he was being abused. He should have been
14 provided love and protection by Jake. He was denied
15 both in the short timeframe that he was in their care.
16 Jake had about six weeks to love and nurture Chayson
17 and enjoy the vibrant child we loved and knew.
18 Instead, he raped and murdered him.

19 I struggle each and every day knowing how brutal
20 this crime was and the suffering Chayson endured.
21 Within a two-week timeframe of us celebrating Chayson's
22 second birthday, he was bruised from head to toe,
23 suffered a collapsed lung and blunt force trauma to the
24 head and torso.

25 I repeat these only to bring to the surface the

1 brutality that Chayson suffered. He had no protector
2 within the torture chamber that commenced in that
3 apartment. They had a responsibility to protect him
4 and he failed. I stand here today with only memories
5 of Chayson.

6 We strongly ask that you sentence Jake to life
7 because that is the sentence that we have all received.
8 The level of crime against an innocent child will have
9 no sentence that will ever replace what we have lost.
10 Our only vindication is that Jake will never be able to
11 commit another crime and make another family go through
12 what we are.

13 I struggle with the concerns of time off for good
14 behavior and possibility of parole. The prosecution is
15 bringing to you an exceptional sentence of 60-plus
16 years. We ask that you sentence him to life.

17 We also feel that Jake needs to see those
18 pictures. He needs to understand the level of what his
19 actions were and go through the suffering that we are
20 going through every single day.

21 THE COURT: Okay, thank you.

22 Does either gentleman wish to address the court,
23 or she has spoken for you all?

24 (Nodding.)

25 THE COURT: Okay, thank you.

1 MS. WILLIAMS: Your Honor, the final person who
2 wishes to address the court is Laura Colley, Chayson's
3 biological mother.

4 THE COURT: Please state your name, and please
5 spell your name.

6 MS. COLLEY: My name is Laura Colley, L-A-U-R-A
7 C-O-L-L-E-Y.

8 THE COURT: Okay. Ms. Colley, what would you like
9 to say with respect to sentencing?

10 MS. COLLEY: Your Honor, it is impossible to
11 summarize the impact that my son Chayson's death has
12 had on my life. I am without words to express what a
13 tragedy this has been for myself and my family. When I
14 lost Chayson, I lost the love of my life. I never
15 dreamed about living in a world where my son,
16 Chayson Troy Colley, did not exist. I had high hopes
17 for Chayson's life. He was a star in every aspect of
18 his life even at just two years old. My life has been
19 forever changed by Chayson's death. He took my son,
20 who was the best part of me.

21 My favorite thing to do at the end of the day,
22 when we were both tired, he would sit on my lap, and I
23 would smell and comb his hair with one hand and I would
24 rub his little feet with the other. I will never get
25 to do that again. It kills me to know that he is gone

1 from me forever. I will never watch my son grow up. I
2 will never see him play in his first soccer game. I
3 will never get to take pictures on his first day of
4 school. I'll never get to see him perform in the
5 school play. I will never get to meet his first
6 girlfriend or take pictures on his prom night. I'll
7 never get to see him get married and start a life of
8 his own. I will never hold his children and tell him
9 how much they look like him. These are just a few of
10 the millions of things that I wanted to see him do.

11 I was and continue to be horrified by the details
12 of what was done to Chayson that night. The Jake I
13 knew would not have ever done such things. Jake had
14 always promised to protect us no matter what the cost,
15 to be a friend to Chayson and to give him the father
16 figure that he had always deserved. Chayson truly
17 seemed to love Jake. Chayson had open arms with Jake
18 anytime. Chayson trusted Jake, and that night Jake
19 betrayed that trust.

20 I now have to live the rest of my life without my
21 beautiful son and with the knowledge that I left my son
22 in the hands of a monster. I hate myself every day for
23 that fact. Jake Musga had made himself out to be the
24 perfect man and I believed him. I trusted him. It
25 cost me my son's life. I'm left wondering how I will

1 ever trust another man. By trusting one man in a
2 single night, I lost my son, who was my one true love.
3 I will never stop missing him. I will never stop
4 loving him. Instead of sleeping by his side, I get to
5 sleep with his slippers and his T-shirts. Instead of
6 hugging and kissing him, I get to visit his grave.

7 I'm asking you to give Jake Musga the maximum
8 sentence available. Considering the magnitude of his
9 crime, I believe he should spend the rest of his life
10 behind bars.

11 I miss my son. His favorite book is "I Will Love
12 You Forever." I will love him forever, and I will like
13 him for always. As long as I'm living, my baby he will
14 be.

15 Thank you.

16 THE COURT: Thank you.

17 Ms. Williams.

18 MS. WILLIAMS: Thank you, Your Honor.

19 The defendant pled guilty to two counts: Count I
20 Murder in the First Degree. He faces a standard range
21 of 261 months to 347 months; Count II, Rape of a Child
22 in the First Degree, for which he faces a standard
23 range of 111 to 147 months to life, subject to the
24 Indeterminate Sentence Review Board.

25 On Count I, there are three aggravating

1 circumstances charged that he pled to, vulnerable
2 victim, deliberate cruelty, and that there were
3 multiple inflicted injuries that substantially exceeded
4 the level of bodily harm necessary to set aside the
5 elements of Murder in the First Degree. With respect
6 to Count II, the aggravators were vulnerable victim and
7 deliberate cruelty.

8 As the court is considering whether or not there
9 are substantial and compelling reasons to go above the
10 standard range, there are any number of substantial and
11 compelling reasons. The State's recommendation, as we
12 set out in our sentencing memo, is going to be for
13 720 months. There is obviously not going to be dispute
14 that Chayson Colley, at just two years of age, was a
15 vulnerable victim due to his young age and due to his
16 stature as well. The actions inflicted on Chayson by
17 the defendant constitute a deliberate cruelty, which is
18 defined as gratuitous violence or other conduct which
19 inflicts physical, psychological, or emotional pain.

20 The third aggravating factor attached to Murder in
21 the First Degree, essentially the argument there is
22 that torture is not contemplated within the elements of
23 Murder in the First Degree. That is exactly what the
24 defendant did to Chayson Colley from March 29th to
25 March 30th, 2013. He tortured Chayson Colley. He beat

1 him, he raped him, and never called 9-1-1, never did
2 anything to help that little helpless boy, but the last
3 hours of that little boy's life were nothing less than
4 horrific.

5 The defendant met Laura Colley in rehab on
6 New Year's Eve 2012. They were both asked to leave
7 rehab on January 16th. Laura moved back in with her
8 parents. The defendant moved in with his father up in
9 Arlington. At the end of February, they moved into the
10 Commencement Park Apartments, just a few blocks from
11 the County-City Building. They moved into a tiny,
12 cramped one-bedroom apartment on the third floor,
13 Apartment 307. The defendant was not used to being a
14 father figure to a rambunctious two-year-old, and that
15 one-bedroom apartment was very small. The living
16 quarters were cramped. The defendant was unemployed.
17 The defendant had no transportation. They were living
18 on food stamps, and the day-to-day was very difficult,
19 something that he was not accustomed to.

20 These are pictures of Chayson on March 29th, 2013.
21 As Your Honor can see, there are bruises on Chayson's
22 face. These are the photographs that Laura Colley
23 texted to her mother and asked, what should we do? The
24 defendant claimed in his interview with law enforcement
25 that he texted them to the pediatrician, but that never

1 occurred.

2 You can see, again, there are some facial bruises.
3 You can also see that there are no bruises on the
4 torso, and there are no bruises on the extremities.
5 That is just another angle of the bruise that you can
6 see there on the forehead. It is a little more
7 difficult to see, but you can see that there are no
8 bruises there on the torso of Chayson Colley.

9 That night, Laura Colley was picked up by her
10 sister Leah to celebrate her birthday. They left at
11 about 7:00 p.m. Within 12 hours, Chayson Colley was
12 dead. Law enforcement served a search warrant. During
13 that search warrant, they discovered also that Chayson
14 was drunk. He was a .11 acute ethanol intoxication.
15 As part of the search warrant, law enforcement seized
16 this bottle, right here, and they tested it. That's
17 the bottle in which the interior was found to contain
18 ethanol or the remnants of alcohol.

19 Throughout his two-and-a-half-hour interview with
20 law enforcement, they repeatedly asked the defendant
21 how it is that a two-year-old toddler was drunk that
22 day? He repeatedly denied giving Chayson any alcohol.
23 In fact, he blamed Chayson. He described it as a
24 miracle. He described it as Chayson doing amazing
25 things. He had filled a 16-ounce glass with three to

1 four shots of cheap vodka and that Chayson must have
2 snuck it. He must have snuck it, drank it, and then
3 put it back so that he, the defendant, would not know
4 that Chayson had snuck that alcohol; repeated denials.

5 And then in his evaluation, which occurred on
6 September 19th of this year, ten days after he pled
7 guilty to these charges, he tells the evaluator,
8 Dr. Muscatel, that he caught Chayson drinking out of
9 the alcohol and then gave him some more in his sippy
10 cup, which, Your Honor, is just a ridiculous
11 proposition to even consider that a toddler is going to
12 take a drink of Pepsi and cheap vodka and like it so
13 much that he is sneaking it and drinking it out of a
14 sippy cup. The real fact of the matter is that the
15 defendant violently force-fed Chayson Colley alcohol to
16 the point at which his blood alcohol level was .11.

17 When he was talking about intoxication, in talking
18 about his alcohol use to law enforcement, he told them
19 that that drink that he poured for himself that night
20 was the very first drink that he had in months, and
21 that bottle of alcohol, that bottle of cheap vodka that
22 they bought, was the first bottle that they bought,
23 that it had been there for two months, and it wasn't
24 even finished.

25 In his evaluation, he then claims the bottle was

1 two-thirds consumed and that he finished the last of
2 it. He also said in his evaluation he drank every once
3 in a while, mostly every weekend, which, again, is
4 inconsistent with what he said to law enforcement. He
5 also admitted to using drugs twice post-rehab,
6 something that he specifically denied in his interview
7 with law enforcement.

8 As you can see there, Your Honor, that's the
9 bottle of vodka, which the defendant was referencing.
10 You can clearly see that the bottle is not empty. He,
11 certainly, didn't finish off the last third as he
12 claimed that he did on September 19th.

13 His description of the drink to law enforcement,
14 and -- again, this is relevant because the defendant
15 has said in his Statement of Defendant on Plea of
16 Guilty and in the evaluation -- I was very drunk. This
17 would not have happened if I wasn't very drunk. Yet,
18 he describes the drink to Detective Nist and
19 Detective Vold, not very strong, three or four shots.
20 Gradually, that escalates to a third of a bottle of
21 alcohol, 8- to 9-ounces, effectively tripling the
22 amount that he claims that he drank initially.

23 He also said in his evaluation, on Page 3, that he
24 drinks about ten times a year and that he blacked out
25 twice a year, but nothing unusual happens.

1 In Dr. Muscatel's report on Page 9, he got records
2 from the Olalla Recovery Center. In those records,
3 they note that on July 30, 2012, the defendant is
4 diagnosed with a number of dependencies including
5 cocaine, which is never referenced once in any
6 interview with law enforcement, with Dr. Muscatel
7 himself, or with the PSI writer, Joseph Sofia. In that
8 clinical history there, he also admits to drinking
9 approximately 30 times a month, which is essentially
10 every day. Again, it is inconsistent with everything
11 that the defendant has said.

12 I would argue that when he is presenting himself
13 to his rehabilitation, trying to seek help for his
14 chemical and drug dependencies, he is not facing
15 criminal charges. This is a time at which he is going
16 to be his most honest.

17 I'm going through to highlight these lies,
18 Your Honor, because to the extent that the defendant
19 stands before you and in the PSI and in Dr. Muscatel's
20 evaluation and says, I'm sorry and I'm taking
21 responsibility, he lies. That is the framework through
22 which this court should view the defendant.

23 THE COURT: May I ask you a question? You had
24 indicated that Mr. Musga did not call 9-1-1.

25 MS. WILLIAMS: He did not, Your Honor.

1 THE COURT: In Dr. Muscatel's report, there is
2 references to him trying to call 9-1-1, or that he did,
3 or that he asked somebody else to call, using his
4 phone, the defendant's phone.

5 MS. WILLIAMS: That's not true, Your Honor. In
6 fact, what that is, the witness, Ricky Saldavia, he was
7 outside of the Commencement Terrace Apartments, waiting
8 for a bus. He turned around and through the glass
9 doors, he saw the defendant carrying Chayson, who was
10 naked in a diaper. When the defendant sees
11 Ricky Saldavia, he places Chayson on the ground and
12 starts performing CPR at that point. Ricky Saldavia
13 comes into the lobby, you know. He is let in. The
14 defendant does not give him his phone. The defendant
15 does not ask Ricky Saldavia to call 9-1-1.

16 Ricky Saldavia grabs the phone from him, looks and sees
17 that there is a number input into the phone, which is a
18 seven-digit number that is not 9-1-1. He clears that
19 number, and he calls 9-1-1. In fact, Ricky Saldavia,
20 when he gives his statements to law enforcement, he
21 makes note of how cold and casual the defendant was.

22 THE COURT: Okay.

23 MS. WILLIAMS: Drug use. In his evaluation, he
24 says that he uses it two times post-rehab. PSI, he
25 said the last time that he used a drug was the last

1 time that he entered rehab. Law enforcement asked him.
2 On Page 265, he denied specifically relapsing since
3 rehab.

4 Rehab, again, he claims to law enforcement and PSI
5 that he successfully completed the program early, but
6 the records that Dr. Muscatel obtained reveal that the
7 defendant didn't graduate early. He didn't
8 successfully complete it, as he is claimed. He was
9 asked to leave because he got into an argument with
10 another person attending the rehab and was told that he
11 could readmit himself after 30 days.

12 This is the last example before Your Honor. He
13 tells law enforcement that he has never fought. That
14 was on Page 271, Bates-stamped; but with his evaluator,
15 Dr. Muscatel, he references a couple of different fist
16 fights, including one that allegedly resulted in a
17 concussion, in which I think, at the very end of that
18 evaluation, Dr. Muscatel adds on that maybe the
19 defendant is suffering from some lingering PTSD as a
20 result of that fight.

21 The only reason that these inconsistencies and
22 these lies are appropriate -- or are important here
23 today is for this court to consider the framework
24 through which it is going to view the defendant and his
25 honesty and whether he is merely standing before this

1 court and accepting responsibility for those horrible
2 atrocious actions.

3 On that night, after Laura Colley left, at some
4 point the torture begins. The torture occurred in
5 multiple rooms in the apartment. It is a little bit
6 difficult to see, but if you can see here, these are
7 placards all of which blood was found and collected by
8 law enforcement.

9 This is the front door right here where a few
10 blood droplets were collected. This is the bathroom
11 door, again, where there was blood noted. This is the
12 bathroom, and you can see that there is blood on the
13 toilet. There is blood on this mat, and there is blood
14 right here on the rim of the bathtub and blood on
15 these -- some blood on the interior of the items placed
16 in the bathtub.

17 At one point, the defendant, I believe, in his
18 statement to law enforcement and the statement to
19 Dr. Muscatel says, well, after I gave Chayson alcohol,
20 or after Chayson snuck the alcohol, he threw up, so I
21 took him into the shower to clean him off. Well,
22 obviously, he doesn't reference filling a bathtub full
23 of items covered with blood, which one can only assume
24 was to cover up the traces of blood to cover up the
25 evidence of his atrocious crime.

1 You can see the blood there. That's blood right
2 there as well. This is also -- I mean, this is a
3 prolonged attack. It was a prolonged attack that
4 caused significant suffering. Again, right there at
5 the bottom of the screen where the placards are, this
6 is the baby wipes, and you can see blood on there as
7 well as a towel.

8 The defendant's demeanor is important.
9 Officer Darland, Ricky Saldavia, Detective Vold,
10 Detective Nist, they all noted the defendant's calm,
11 casual, callous demeanor.

12 Apparently, the Commencement Terrace Park
13 Apartments used to be a old folks' home. At some
14 point, the defendant acknowledges that to
15 Officer Darland. What he says is, a life is a life,
16 but it sucks when it is a two-year-old versus is a
17 90-year-old. At that point, Chayson Colley was still
18 clinging to life in the back of an ambulance being
19 transported to Mary Bridge.

20 In his interview with Detective Vold and
21 Detective Nist, which the State attached, quite
22 obviously, he is cold, and the way that he casually
23 lies throughout that interview is pretty chilling.
24 There is one point at which Detective Vold talks about
25 Chayson and his condition. The defendant essentially

1 flippantly replies, you know, he could be sitting with
2 a sucker in his mouth right now. After knowing the
3 hours of torture that he has inflicted on a helpless
4 two-year-old, his response is, for all I know, he could
5 be sitting with a sucker in his mouth right now. It
6 doesn't get much colder than that because the defendant
7 lacks a social conscience. He lacks any sort of social
8 or moral responsibility.

9 That's actually something that Dr. Muscatel
10 pointed out on Page 2 of his evaluation. He remarks
11 that there is no evidence that the defendant is
12 suffering from depression, subjective distress, social
13 withdrawal, or feelings of isolation or alienation.
14 Despite the current circumstances, Mr. Musga is not
15 depressed or even particularly anxious. That is
16 consistent with everything that those eyewitnesses saw,
17 and that is consistent with somebody who is able to
18 torture a two-year-old and show no remorse.

19 The defendant has provided a timeline. This is
20 the timeline that he gives in his most recent version,
21 which is September 19th, to Dr. Muscatel. He claims
22 that Chayson fell off the couch straightforward onto
23 his head; that he spoke to Laura at midnight and then
24 watched a movie with Chayson for about 30 minutes; that
25 at some point that night, after trying to get Chayson

1 to bed, he fell off the bed. At that point, he
2 realized that Chayson was not breathing. He runs down
3 stairs, throws the phone to the witness, and asks him
4 to call 9-1-1. As he says, he is interviewed by law
5 enforcement for eight hours. That is all on Page 6 of
6 Dr. Muscatel's report. This is contrasted with
7 everything that the witnesses have said.

8 Cathy Howard. She lived in Apartment 207, which
9 is the apartment directly below Apartment 307. She is
10 wheelchair bound. She told law enforcement officers
11 that at about 11:00 p.m. that night, she started
12 hearing fighting noises, thumping noises, running
13 noises, and it went on. It went on to the point that
14 at 1:30 a.m., she got into her wheelchair; she went up
15 the elevator; she went to Apartment 307; and she
16 knocked on the door; and nobody answered. She could
17 hear the baby crying out, and then she heard the crying
18 stop. Nobody ever came to the door. We know that the
19 defendant heard her because whatever he did to Chayson
20 to get him to stop crying, Chayson stopped crying.

21 He only put Chayson down and started performing
22 CPR on Chayson after Ricky Saldavia saw him. He is
23 naked wearing only a diaper. What's the defendant
24 doing at 4:00 in the morning when he is not calling
25 9-1-1? He is not asking for help. There were

1 dumpsters nearby. He probably thought that Chayson was
2 dead at that point, and so he was just going to dispose
3 of Chayson's body as if he was nothing more than a
4 piece of trash.

5 As I have already said, the number input into his
6 phone was not 9-1-1. Ricky Saldavia took the phone
7 from him and called 9-1-1. When he was on the phone
8 with 9-1-1, the defendant was claiming, oh, he has a
9 history of seizures, and there is no history of
10 seizures.

11 Again, he claims that he is interviewed for eight
12 hours when, in fact, the interview began at 10:29 a.m.,
13 and it concluded at 12:55 p.m., a little less than
14 two-and-a-half hours.

15 THE COURT: 12:55 a.m.

16 MS. WILLIAMS: 10:29 a.m. to 12:55 p.m., I
17 believe, Your Honor.

18 THE COURT: Okay.

19 MS. WILLIAMS: Turning to the actual physical
20 injuries suffered by Chayson and beginning, first, with
21 the rape, which per Dr. Lacey would have been the
22 injury that occurred first during this assault.

23 He had a full thickness inner rectal mucosa
24 laceration, which extended throughout the skin. It was
25 one-centimeter in length. The tear extends into the

1 underlying muscular layer from the anal verge to the
2 dentate line, which is, essentially, the lower third of
3 the anal canal to the opening of the anus.

4 He had a circumferential anal mucosa hematoma,
5 which is essentially a ring of bruising around the anus
6 itself, which is very severe. He had a deep perirectal
7 hemorrhage that extended four to five inches inside.

8 Now, the defendant, in a Statement of Defendant on
9 Plea of Guilty, says that he inserted his finger into
10 Chayson. In his September 19th evaluation, he claims
11 that he did not sexually assault Chayson. Obviously,
12 the injuries speak for themselves. It was a violent
13 rape. It is the State's assertion that he was raped
14 with the defendant's penis.

15 Acid phosphatase, which is a substance found in
16 high amounts of semen and lower amounts in some other
17 body fluids, was found in one of the diapers, the
18 blood-soaked diaper, that was collected by law
19 enforcement.

20 As you can see, Your Honor, there are some diapers
21 and blood-soaked wipes. Imagine Chayson's terror as he
22 is sitting in this apartment. Instead of calling for
23 9-1-1, all the defendant does is reach for another wipe
24 and wipe away more blood and more blood and more blood
25 and keep changing the diapers.

1 The defendant, as you can see his driver's
2 license, six-foot, two. He weighs 185 pounds. He
3 played high school football. He played arena football.
4 He is a strong, muscular individual. Chayson Colley
5 was three feet tall, and he weighed 36 pounds. Not
6 only was he physically incapable of fighting the
7 defendant, he was so young he might not have
8 immediately even recognized the peril that he was in.
9 He couldn't call for help. He couldn't outrun the
10 defendant. He couldn't fight him off.

11 When Karen Howard came up there to find out what
12 was going on, he wasn't even able to scream for help.
13 Perhaps at that point, Karen Howard might have called
14 9-1-1, but the defendant prevented him from screaming
15 for help, if he was even capable of screaming for help
16 at that point.

17 Instead of calling for help, instead of getting
18 help, he just kept changing the diapers to the point
19 where we have here, here, six bloody diapers and any
20 number of blood-soaked baby wipes.

21 When Your Honor is thinking about vulnerable
22 victim and when Your Honor is thinking about deliberate
23 cruelty, think about the gratuitous violence of this
24 rape and think about the psychological and the
25 emotional torment that Chayson was experiencing after

1 this rape when, instead of receiving help, he was just
2 getting his diaper changed.

3 The head injuries. He had face and scalp bruises
4 and abrasions. He had a superior frenulum laceration,
5 which, again, is the upper ridge right below the upper
6 lip, which is consistent with forcefully jamming a baby
7 bottle into somebody's mouth. He also had multiple
8 subscapular contusions.

9 His brain injuries. He had subdural hematomas,
10 acute, acute subarachnoid hemorrhages, focal traumatic
11 injury, cerebral edema, and early hypoxic ischemic
12 damages to the brain. The brain injuries as well as
13 the abdominal injuries would have been independently
14 fateful to Chayson Colley.

15 The next photographs are photographs in which the
16 graphic photos of Chayson begin for those in the
17 audience wishing to avert their eyes.

18 THE COURT: Question, on the brain injuries, these
19 were acute brain injuries. Were there any historical
20 brain subdural hematomas, for instance?

21 MS. WILLIAMS: There was an old brain injury as
22 well as there was an older abdominal injury as well,
23 Your Honor. The State is not using any of those
24 injuries as a basis for a sentencing recommendation.

25 You can see here Chayson Colley, and you see his

1 face. You can see the bruises. I call Your Honor's
2 attention to the photos from the beginning, which
3 showed Chayson Colley, having a few facial bruises, but
4 certainly not to this extent.

5 In his interview with Detective Nist and
6 Detective Vold towards the end, when the defendant is
7 getting upset with their confrontation, he said, and
8 basically instead of going to visit him at the
9 hospital, I spent two hours in the holding cell, and
10 then another four in the interview room when I could be
11 there, you know, holding his hand because his mom is
12 not there. He has nobody there right now. He is
13 probably scared shitless, doesn't know what is going
14 on.

15 This is the defendant complaining about the time
16 that he has been interviewed for all of these injuries
17 that he is responsible for, talking about Chayson being
18 scared, not knowing what is going on, when, in fact,
19 that was what was going on in Apartment 307. Chayson
20 being scared. Chayson being terrified. Chayson
21 wondering where his mother is. Chayson wondering when
22 the torture is going to stop.

23 This is a view, a different view, so that
24 Your Honor can see the full range of facial bruises
25 that Chayson Colley suffered. You can see the bruises

1 underneath -- above, to the nose, to the forehead here.
2 You can see the contusions under the scalp, and you can
3 see bruising on the ear, on Chayson's ear.

4 His abdominal injuries, which, as I have said,
5 were also fatal. He had at least 13 discreet
6 contusions on the abdomen. And he also had a mesentery
7 laceration with hemoperitoneum with 800 milliliters of
8 blood. Essentially, all that is, is blood leaking into
9 the abdominal cavity due to the tear. You can see in
10 the way that Chayson's chest is a little bit inflated
11 where that would be. You can also see the contusions
12 and the bruises that Chayson suffered.

13 Dr. Lacey also noted multiple red contusions that
14 were too numerous to count, as he said. Your Honor can
15 see the extremities and the bruises, his legs. You can
16 also see these little injuries that appear all over
17 Chayson as well. You can even see bruising here to the
18 feet. So, when it is reported that Chayson Colley was
19 beat from head to toe, Chayson Colley was literally
20 beaten from head to toe. He had more than 30 discreet
21 contusions and abrasions to the back and buttocks.

22 If Your Honor just counts the 13 abdominal bruises
23 and the 30 to the back of the buttocks, and you don't
24 even consider the facial bruises, the head bruises, the
25 ear bruises, the extremity bruises, that is 43 discreet

1 bruises. That is at least a minimum. Obviously, much,
2 much more. Probably over 100 discreet blows that that
3 young child suffered over, over, over again.

4 When it comes back to responsibility,
5 September 19th post-plea, what the defendant tells
6 Muscatel is that: In our interview, Mr. Musga denied
7 or said that he had no recall of hurting this child,
8 and found it upsetting to think that the injuries to
9 the child, including possible sexual injuries, were
10 attributable to him. This was after the plea.

11 To the extent, Your Honor, that the defendant is
12 trying to claim, as he does in his PSI, that he is
13 accepting responsibility and that he is trying to ease
14 the pain of the victim's family, he has accepted no
15 responsibility. He continues to deny doing this. He
16 wasn't drunk that night. This is not an alcoholic
17 blackout. It is not something that he is just blocking
18 out because he can't remember. This was a torturous
19 attack on a vulnerable victim. It was gratuitous
20 violence, and he was tortured, which, again, is not
21 contemplated by the murder statute. He could have
22 easily killed him at any time. There was nothing
23 preventing that. He killed him with the abdominal
24 injuries and he killed him with the head injuries, but
25 the rape had nothing to do with the murder, as well as

1 the repeated blows to the extremities; just the
2 gratuitous nature of this assault.

3 The last few hours of Chayson Colley's life were
4 horrific. It is beyond even imagination. There are
5 times when there are cases that deserve sentences
6 irrespective of whether or not it was after a jury
7 trial or after a plea. There are sometimes when a
8 crime is heinous and the person who perpetrates the
9 crime is so amoral that the only appropriate sentence
10 is the exceptional sentence, which is what the State's
11 recommendation is, which is 720 months to life, subject
12 to the Indeterminate Sentence Review Board. On
13 Count I, there is 36 months of community custody. On
14 Count II, a lifetime of community custody. The State
15 is asking for standard legal financial obligations:
16 500-dollar Crime Victim Penalty Assessment; 200 DNA
17 fee -- excuse me, \$200 costs; \$100 DNA fee; HIV
18 testing. He'll have to register as a sex offender per
19 the terms of the statute. No contact with minors and
20 no contact with the victim's family, law-abiding
21 behavior.

22 Your Honor, 720 months is, obviously, an
23 exceptional sentence, and it is a sentence well within
24 the case law contemplated by Washington State. There
25 are many substantial compelling reasons, as I have laid

1 out for this court, to impose 720 months to life on the
2 defendant. I ask the court to do that. When you do
3 that, be thinking about the last few hours of
4 Chayson Colley's life and knowing that the defendant
5 will deserve each and every minute that he spends in
6 prison.

7 In conclusion, Your Honor, there is a two-minute
8 video of Chayson in life that the family asked me to
9 present so that the final images that Your Honor will
10 see are of Chayson as he was in life.

11 (Video played.)

12 THE COURT: Thank you, Ms. Williams. Anything
13 further from the State?

14 MS. WILLIAMS: Nothing further from the State,
15 Your Honor.

16 THE COURT: The defense.

17 MR. WARNER: Thank you, Your Honor.

18 If we are going to proceed in the same order, if
19 the court would allow Janet Musga, the defendant's
20 mother, to read a letter to the court. She would come
21 in from the outside to speak.

22 THE COURT: Sure. I would be glad to hear from
23 Ms. Musga.

24 Please state your name, and please spell your
25 name.

1 MS. MUSGA: Janet Musga. J-A-N-E-T, M-U-S-G-A.

2 THE COURT: Thank you. What would you like to
3 tell the court about sentencing?

4 MS. MUSGA: I'm Janet, Jake's mother. I'm here to
5 speak for the Musga family. Out of respect for the
6 Colley and Jones family, we chose only to have Mike,
7 Jake's dad, and myself, here at the sentencing. Our
8 entire family will always love and support Jake now and
9 forever.

10 We, the Musga family, send our deepest sympathy
11 and love to Laura and Brannon and both of your families
12 for the pain that will always been in your heart. To
13 say we are sorry for your loss seems insignificant and
14 wrong for there is nothing that we can say that will
15 ease the pain and heartbreak you will always have. For
16 this, we are truly sorry.

17 We know that if Jake could take your pain upon
18 himself, he would. This is one of the hardest letters
19 we will have ever to write, for how do you ask for
20 mercy and forgiveness for someone who held a dying
21 child in his arms. As parents, we are appalled. As
22 Jake's family, we are heartbroken. As humans, we want
23 answers. We want to know why. How could this have
24 happened? How could we have prevented this from
25 happening? There is no answer.

1 Jake has talked to me about this every day for
2 months. He, too, does not understand. Jake is taking
3 full responsibility for Chayson's death. He is
4 extremely remorseful and saddened by his actions. Jake
5 could have gone to trial and maybe gotten off on a
6 technicality or by a sympathetic jury maybe, but he
7 didn't. He did not want any of us to go through the
8 pain that a trial would have caused all three families.

9 This has affected us deeply because we are a very
10 close, loving family. Jake has many older siblings,
11 nieces, nephews, aunts, uncles, and cousins that love
12 him and are also trying to understand what happened and
13 answer people's questions. Nothing like this should
14 ever have happened to any of our families. We, the
15 Musga family, would like to say we are extremely sorry.
16 We would like to ask you for forgiveness and mercy for
17 Jake's actions.

18 Chayson's death has been a horrific tragedy for
19 all three families. It has ripped us apart, but it has
20 brought us closer. We have been victimized over and
21 over on social media, TV, the local newspapers, and
22 radio talk shows. Chayson is a happy little angel and
23 does not want to see his loved ones get swept up in the
24 scandalous news reports. He wants his memory to be
25 happy, not sad. Chayson was a dear sweet little boy

1 who loved both families very much. May this day bring
2 love, peace, and forgiveness to your hearts, but most
3 of all, the Musga family prays that God blesses you and
4 brings you some small measure of closure. Sincerely,
5 the Musga family.

6 THE COURT: Thank you.

7 Mr. Warner, did you say that there was another --

8 MR. WARNER: No. His father is going to let Janet
9 speak for himself. The court has two letters.

10 To use the word "tragedy" in this case demeans
11 Chayson's joys, gift of life. This case is a horrible
12 confluence of youth, alcohol, drugs, and everything you
13 can put together to have this tragic, horrible result.

14 Jake was drinking. He has been battling
15 addiction. He met Chayson's mother on his second
16 effort at rehab. He has a history of drugs and
17 impulsive behavior. Does he have a clear recollection
18 of that night? No, he does not. He blacks out when he
19 drinks. He has a highly addictive personality,
20 according to Ken Muscatel, Dr. Muscatel. The State has
21 made great effort to suggest that Mr. Musga was lying
22 during his interview with the police. The defense
23 would suggest that Mr. Musga was still intoxicated and
24 drank eight or nine ounces of vodka mixed with Pepsi.

25 The police did not test Jake Musga, and I submit

1 that they did not because they didn't want to know the
2 result and give him an excuse. We are not seeking
3 excuses here, Your Honor. What we are asking the court
4 to do is to do a fair and just sentence.

5 Is an exceptional sentence available to the court?
6 Absolutely. Is it the appropriate sentence? No. The
7 reason we believe it is not the appropriate sentence is
8 that a standard range sentence -- and we are asking for
9 a mid-range sentence on the Murder 1 count. That would
10 be 300 months, approximately 25 years. Jake would be
11 over 45 when he would even possibly become eligible for
12 the possibility of parole.

13 The reason this would be a just sentence is
14 Count II, the Rape of a Child in the First Degree.
15 That is an indeterminate sentence. Jake Musga will
16 never get out of prison unless the Independent Sentence
17 Review Board determines that he has made sufficient
18 progress in understanding what led to this horrific
19 crime, what caused it, his responsibility for it, and a
20 possible chance of getting out. He doesn't understand
21 from a layperson's situation how this was sexual. He
22 remembers a finger. The State has suggested that the
23 acid phosphatase in a diaper suggests that there was a
24 sexual penile assault. No semen was found. In fact,
25 the DNA report was submitted as part of the State's

1 presentence report.

2 We don't know who the source is in the acid
3 phosphatase. Is it Jake? Is it Chayson? We just know
4 that it was found in a diaper. It was found in small
5 amounts of other bodily fluids. Urine? Chayson? We
6 don't know.

7 The State is trying to prejudice this court, and
8 the court is intelligent enough to see through that.
9 The State suggested that somehow the defendant's acne
10 was part of this. Another example of the State's
11 gratuitous pandering is suggesting that when Mr. Musga
12 came down the stairs, he intended to throw the body in
13 a trash bag and dump it in the dumpster. There is
14 absolutely nothing in this case that would suggest that
15 is even a remote possibility. Nothing. This happened
16 at the end of March. My client was wearing shorts,
17 athletic shorts. He is not going outside. There is
18 nothing to suggest that.

19 Calling 9-1-1. When you turn on a phone, the last
20 number dialed comes up. He passed the phone -- he let
21 Ricky Saldavia into the lobby. Ricky Saldavia called
22 9-1-1 and was relaying instructions from the dispatcher
23 to Jake on how to perform CPR. He performed CPR as
24 best that he could. It was ineffective, and Chayson
25 died.

1 We can't allow alcohol or drugs that suggests as
2 an excuse. When you look at Dr. Muscatel's report, we
3 are talking about a, clearly, impulsive behavior.
4 Addiction is an impulsive behavior. He is drinking.
5 He is underage. He is blacking out. He lost it, is
6 how he phrased it to this, court when a little boy
7 urinated on him. He remembers seeing a finger. The
8 State suggests, again, that it was penile. There is
9 nothing to suggest that anywhere in the documentation,
10 the DNA, the autopsy.

11 There are no excuses, Your Honor, but Mr. Musga
12 does want to take responsibility. He didn't want to
13 put the families through this. He has been dealing
14 with it on a daily basis. His mother has seen a
15 different Jake now that he is sober. It is the old
16 Jake, the sober Jake. Any family that deals with
17 somebody that is addicted knows the difference between
18 the addict and the sober individual. Jake will be
19 sober. He will make progress.

20 We would like the court to give him the
21 opportunity some day to show that he has learned from
22 this horrific mistake. The way that the court could do
23 that is to impose the standard range sentence and allow
24 the Independent Sentence Review Board to review that.
25 The court may not be on the bench on that point. I may

1 not be alive at that point. That is where they, the
2 government, the State, will look to see if he has made
3 progress. If they say, no, so be it. We believe that
4 Jake will make progress and will show that this was
5 horribly wrong. He does understand the horrible impact
6 this has had on all of the families.

7 Jake has a brief letter he would like to read to
8 the court, if he may, if that's all right.

9 THE COURT: Sure. Mr. Musga has the right of
10 allocution, of course. Have you concluded your
11 remarks?

12 MR. WARNER: I have, Your Honor.

13 THE COURT: Mr. Musga, is there anything that you
14 would like to say to the court before a sentence is
15 decided on you?

16 THE DEFENDANT: Yes, there is, Your Honor.

17 I know that there is no possible way to take back
18 my actions that day. Chayson's was an innocent life
19 taken away, and many other people have been emotionally
20 damaged because they lost a young child who is close to
21 them.

22 I know that there are no words that I can say to
23 take the pain away from the family. I just want
24 everybody to know how truly sorry I am. Not a single
25 day goes by that I don't think about Chayson and how I

1 wish there was some way that I could bring him back to
2 his mother. I would trade my life for his back without
3 hesitation. I do not remember much about that night,
4 but that is no excuse. I accept full responsibility
5 for my actions, and I will be complying with any and
6 all recommendations from the court. I don't know why I
7 thought that I could take care of a young child when I
8 can barely take care of myself. Drinking alcohol and
9 baby-sitting was completely irresponsible of me,
10 especially when I'm not even old enough to drink. I
11 blacked out and hurt someone who never deserved it. I
12 did things that I would never do with a sober mind, but
13 it did happen and the damage is done. I would do
14 anything to bring Chayson back. There is so much pain
15 in my heart waking up and going through the day knowing
16 what happened. It seems like a nightmare that never
17 ends, and I know it must be worse for the family.

18 Who I was under the influence of alcohol is not
19 who I am today or who I will be tomorrow. I know it is
20 asking a lot. I just ask Laura, her family, and the
21 courts for forgiveness. I ask God to forgive me every
22 day, but I think the hardest part will be trying to
23 forgive myself for all of the pain that I have caused.

24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Musga.

1 I want to thank, of course, the Colleys, the
2 Joneses, and the Musgas for coming in and talking to
3 the court and talking to Mr. Musga here. I think it is
4 important that criminal defendants see how what they
5 have done has impacted other people in their lives. It
6 is of course the victims who are most directly
7 impacted, but also the family of the defendant, who is
8 also impacted.

9 Mr. Warner said something about there is the
10 addicted person, and then there is the sober person,
11 and they're a different thing. Certainly, this court
12 has seen, over periods of years, that that is true. It
13 is like the family of the addicted person says, what
14 happened to our kid? If they could just get sober, and
15 sometimes they do, we can get this person back again.
16 They are less cynical. They are less deceitful. They
17 are more motivated. They are more optimistic. They
18 are more productive. They are more helpful. They are
19 more truthful.

20 I don't know if this is a typographical error, but
21 I noticed that Jake and Chayson share the same date of
22 birth.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: March 5th. 17 years apart. I'm sure
25 17 years ago, when Mr. Musga was two years old, there

1 was great promise, great possibility. And certainly
2 one of the things that the Colleys and the Joneses and
3 their other family members are so worked up about is --
4 one of the things that Bobbye Jones in particular
5 talked about was Chayson's qualities and what a
6 wonderful kid he was. This idea that -- the promise --
7 the prospect for greatness, if you will, has now been
8 taken from us all; not just their families, of course,
9 but all of the rest of the society that would have
10 interacted with him over time. He would have
11 contributed to it. We all might well have thought
12 about those same things about Mr. Musga 17 years ago,
13 and here we are.

14 One thing that, I guess -- I might be wrong about
15 this, but I guess I'm willing to at least have a
16 philosophical argument with Ms. Williams about, is
17 whether or not Mr. Musga is sort of an amoral person.
18 I don't know that he is.

19 It is interesting to me that the forensic
20 psychological evaluation and the MMPI II suggest really
21 almost to the contrary, that Mr. Musga is by and large
22 a normal, intact person, which is actually in some ways
23 far more scary. I could somehow understand somebody
24 whose mental make-up has stripped them of the
25 possibility of being empathetic to the rest of us.

1 That is the case, of course, of antisocial personality
2 disorder. They're pathological. They hurt -- not
3 always for the pleasure of that, but simply because
4 they don't care about anybody else. I'm not sure that
5 is actually Mr. Musga's issue.

6 There is certainly an indication in that report --
7 and the thing is, my own personal experience with these
8 MMPI tests is that they actually provide, if they are a
9 valid test, and this one seems to be, a reasonable
10 window into people's personalities. I used to be
11 fairly skeptical of those tests. As time has gone by,
12 they seem to be proved to me that at least there is
13 some real validity to them.

14 What we see in that report is that Mr. Musga seems
15 to have some elements of issues with anger, and he has
16 certainly some issues with maybe being an addicted
17 personality. I'm not sure it's quite as strong, if you
18 will, as Mr. Warner says. He somehow concludes that
19 there may be kind of a bipolar aspect to it; although,
20 that isn't confirmed by the testing. There was an
21 incident when he was young in which that was sort of
22 thought to be the case. I certainly know that
23 psychological evaluations and diagnoses can change over
24 time. There are often disputes about whatever the
25 differential diagnosis here is. In the end, the Axis 2

1 diagnosis of Dr. Muscatel is personality disorder,
2 unspecified. That doesn't tell me a lot. I'm not sure
3 it is even supported by the history of all of this.

4 I do agree with Ms. Williams that this was a
5 singularly brutal and horrific crime. Murder is by
6 definition a horrific crime. It is taking away
7 everything that somebody has -- I mean everything --
8 their future, their past, their present. It always
9 seemed to me to be a particularly selfish crime.

10 The defense has stipulated to those acts which
11 constitute exceptional circumstances and aggravating
12 circumstances, which allows this court to make a
13 sentence beyond what is a standard range sentence for
14 these offenses. That does not mean that the court is
15 required to do so.

16 The standard range sentence as charged and as
17 found guilty for Murder in the First Degree and the
18 sentence with the criminal history that Mr. Musga has
19 is 261 to 347 months. He does not have a particularly
20 significant criminal history. He is a young person.
21 One hates to throw away that promise, but one asks
22 oneself why. No one really has a good answer here.
23 When Ms. Musga talks about how she has discussed this
24 with her son and how they really don't know, I suspect
25 that there is at least truth to that from Ms. Musga's

1 point of view. I do think that Mr. Musga has some
2 better idea what it might be. I don't think he was so
3 out of touch with his senses that he doesn't know what
4 happened. He says that he has no memory or little
5 memory of this; yet, he was able to give all kinds of
6 explanations to the police, which explanations were not
7 substantially accurate. I suspect Mr. Musga, indeed,
8 has a pretty intact memory of what happened here. I
9 suspect that it is just not easy for him to deal with
10 that. Maybe that is a sign of some conscience, which
11 would be a good thing. As I say, those who are
12 antisocial personalities, those who are pathological in
13 that way, don't have much of a conscience or if any at
14 all. It makes me think there may be some hope for
15 Mr. Musga. Some hope. There have been at least a
16 letter from the mother of an ex-girlfriend that
17 suggests she had her issues with him, but thinks that
18 he would be a candidate for rehabilitation if it's done
19 properly.

20 It is strange that this child should have an
21 elevated blood alcohol level. It is strange to have
22 the number of blows that must have rained down on this
23 child in a short period of time. It's strange that
24 this, apparently, went on -- a short period of time in
25 the big picture of things -- this went on for hours.

1 Whatever anger would have motivated Mr. Musga was not
2 abated for hours and hours. Chayson was, indeed, too
3 young to understand all of this or to respond to it
4 and, certainly, to protect himself. I am sure that he
5 suffered -- somebody who is a rape victim ordinarily
6 would suffer a certain embarrassment, a certain shame,
7 a certain -- I'm not probably putting this well, but
8 they're mortified about what has happened to him. I'm
9 not sure that Chayson could have been old enough to
10 understand that, but he certainly would have understood
11 fear. He certainly would have understood pain. He
12 certainly would have understood that this was not
13 stopping him, that this was unrelenting.

14 Ms. Williams points out that Chayson was injured
15 from head to toe internally, externally, every way that
16 you can imagine. Although the court does not have to
17 depart from the standard range, there are aggravating
18 circumstances which justify it, and I will depart from
19 the standard range.

20 Now, the Presentence Investigation Report writer
21 has recommended 494 months. He reached that by adding
22 essentially the high end of the range for each of these
23 counts, 347 months plus 147 months. The range for Rape
24 of a Child in the First Degree, which was Count II, is
25 111 to 147 months. It's an indeterminate sentence, so

1 it is then to life and to be determined by the
2 Indeterminate Sentence Review Board.

3 The murder case, of course, is not an
4 indeterminate sentence. The court must define a
5 specific sentence within the standard range.

6 The State is suggesting 720 months, which is
7 60 years.

8 There has been discussion about what the standard
9 range sentence represents and what should be done just
10 as a part of what the law is here. Some years ago --
11 and this is probably more than 20 -- the State of
12 Minnesota had a similar sentence scheme as Washington
13 did or does. At one point, it indicated that if we
14 went beyond two times the standard range, that would
15 constitute an abuse of discretion. The State of
16 Washington has looked at that and decided that is not
17 the case. What is appropriate is a function of what
18 each case holds.

19 I do think, though, that the standard range -- and
20 this is an odd way of putting it, I think. The
21 standard range in some sense is to represent what might
22 be a typical crime of such classification and criminal
23 history.

24 As I say, the standard range for Murder in the
25 First Degree is 361 to 347. A range for typical

1 murders, as awful as it is to sort of put it that way,
2 I do think that Mr. Musga is entitled to some
3 consideration given his age and his lack of maturity
4 and his substance abuse issues, but those were
5 decisions that he made. If it turned him into somewhat
6 of a different person, as I have discussed as many
7 people who are addicted are or become, that's a choice,
8 too. There was a point of sobriety. There was,
9 apparently, some sobriety in a treatment program even
10 just a few months before all of this, and he chose to
11 buck that, leave that program on the terms, which are
12 not necessarily good ones, and just a few months later
13 we have what we have now. Certainly, when one is
14 intoxicated, one is putting not only one's self at
15 risk, but anyone having to deal with them. That is a
16 choice that he makes.

17 As I say, the Presentence Investigation Report
18 writer suggested 494 months, which is the high end of
19 each of these run, essentially, consecutively. I felt
20 that an appropriate way to approach this was to look at
21 these cases, if you will, and say, does this -- how
22 does this compare to the typical case, which our
23 standard range suggests? It strikes me just awfully
24 bad.

25 My view is that this should be based essentially

1 upon the midpoint of the standard range on each of
2 these offenses, but times two. That produces, in the
3 case of murder, a sentence of 608 months. With respect
4 to the Rape of a Child, 258 months and, of course, to
5 life in the judgment of the Indeterminate Sentencing
6 Review Board.

7 I will impose the legal financial obligations that
8 the State is requesting. He is required to register as
9 a sex offender under the rape charge for life. There
10 is a DNA test. He is on community custody on the
11 murder case for 36 months; life on the rape charge, and
12 the other conditions that have been outlined.

13 In addition to that, there is the Appendix H
14 conditions that were attached to the Presentence
15 Investigation Report, which should also be made a part
16 of the conditions of the Rape of a Child in the First
17 Degree charge, Count II.

18 MS. WILLIAMS: Your Honor, the State does not
19 prepare findings with the exceptional sentence, so
20 would need to set a hearing date for that. I would
21 just inquire if the defendant would waive his presence
22 at that hearing.

23 MR. WARNER: We would, Your Honor. He would.

24 THE COURT: Still, try to schedule it fairly soon.

25 MS. WILLIAMS: Yes, Your Honor.

1 THE COURT: Would sometime the first week of
2 December work?

3 MS. WILLIAMS: Yes, Your Honor. For the State, it
4 would work.

5 Your Honor, in terms of the exhibit that the State
6 used at sentencing, the PowerPoint, we have provided it
7 to Ms. Winnie to be marked as State's Exhibit 1 and
8 attached an agreed protection order to that. We didn't
9 want to file it with the court, obviously, given the
10 nature of the photographs, but it should be made a part
11 of the record.

12 THE COURT: Exactly. It should be.

13 Is that acceptable to the defense?

14 MR. WARNER: Yes, Your Honor.

15 THE COURT: That's what we will do.

16 There was a proposed order -- I have not signed
17 that -- having to do with sealing with some of that?

18 MS. WILLIAMS: It's not sealing, Your Honor. It
19 is that if it is to be viewed, it cannot be duplicated
20 or removed from the County-City Building.

21 THE COURT: Is the State going to seek
22 restitution?

23 MS. WILLIAMS: I'm not aware of any restitution
24 costs at this time. If there are, we will set a
25 restitution hearing within the statutory timeframe.

1 THE COURT: Did we note restitution by later order
2 of the court?

3 MS. WILLIAMS: Yes, I did note that on the
4 Judgment and Sentence.

5 (Proceedings Concluded.)

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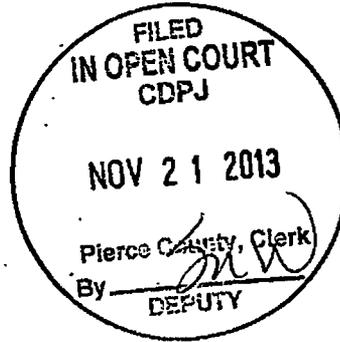
*****CERTIFICATE*****

I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, November 21st, 2013, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 23rd day of September 2014.

KATRINA A. SMITH/SM-IT-HK-302N9

APPENDIX ff



RECEIVED
PIERCE COUNTY SUPERIOR COURT
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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION (PSI)

TO: The Honorable Bryan Chushcoff
Pierce County Superior Court

DATE OF REPORT: 11/14/13

NAME: Musga, Jake J.

DOC NUMBER: 368830

ALIAS(ES): N/A

COUNTY: Pierce

CRIMES: Murder in the First Degree (Count I);
Rape of a Child in the First Degree (Count II)

CAUSE #: 13-1-01369-1

DATES OF OFFENSES: 3/30/13 (Count I);
Between 3/29/13 and 3/30/13 (Count II)

SENTENCING DATE: 11/21/13

PRESENT ADDRESS: Pierce County Jail

DEFENSE ATTORNEY: Keith R. Hall
428 W. Harrison St.,
Kent, WA 98032

I. OFFICIAL VERSION OF OFFENSE:

Pursuant to the Information filed on April 3rd, 2013 in Pierce County Court, the Pierce County Prosecuting Attorney's Office formally charged Mr. Musga with one Count of Murder in the First Degree (Count I), and one Count of Rape in the First Degree (Count II). On September 9th, 2013, Mr. Musga pled guilty to those charges. He is currently being held in custody in the Pierce County Jail, and is to be sentenced on November 21st, 2013 before the Honorable Bryan Chushcoff.

The following was extracted from the Declaration for Determination of Probable Cause filed by the Pierce County Prosecutor's Office on April 3rd, 2013. It was based on Tacoma Police Department reports for Incident Number 130890189:

That in Pierce County, Washington, on or about the 30th day of March, 2013, the defendant, JAKE JOSEPH MUSGA, did commit the crime of murder.

On the listed date at 0407 hours Tacoma Police responded to the Commencement Terrace Apartment Complex at 29 St. Helens regarding a badly bruised two year old boy who was not breathing. When police arrived Fire Department medics were loading the child into an ambulance for transport to a trauma center. Police spoke with a witness who reported that he had just exited the locked apartment complex when he saw a frantic male, later identified as MUSGA, in the lobby holding a child and crying. MUSGA let the witness back into the lobby. The child's body was covered with bruises; the witness called 911.

According to medical staff the child, identified as two year old CC, was intubated and in "major shock" when admitted to the hospital. CC's condition was "catastrophically bad" and he showed no significant sign of brain activity. CC was pronounced dead later that morning. Doctors noted CC was bruised from "head to toe," suffered bleeding in the brain and stomach, had a collapsed lung and bruising at the rectum. The child had a blood alcohol level of .12 at the time of admission to the hospital. Doctors indicated to detectives that there were clear signs that CC had been abused.

MUSGA was identified as the boyfriend of CC's mother, who was identified as Laura Colley. MUSGA was arrested. Laura Colley was not present at the scene and was apparently not with the child during the hours leading up to the 911 call.

Detectives interviewed MUSGA. MUSGA told detectives that he and Laura Colley met in rehab in December 2012. They had been dating for about two months and moved into the Commencement Terrace apartments about 5 weeks ago. Laura was employed as a leasing agent for the apartments. MUSGA was unemployed. MUSGA cared for CC when Laura was at work.

MUSGA told detectives that CC was a rambunctious child, fell a lot and bruised easily. MUSGA said he and CC got along great but when Laura was home CC's attention was directed towards her. CC was a good kid but would act out when he did not want to do something. Their usual method of discipline was a light slap on the hand or a time out.

On Thursday evening, March 28, MUSGA and Laura attempted to brush CC's teeth. CC flailed and may have bumped his head on the counter. They took CC to the hallway and Laura "gently" laid him on the floor. Laura then crouched with her knees holding CC while MUSGA brushed CC's teeth. MUSGA said CC had enough room to lift his head up and bang his head on the floor.

On Friday, March 29, MUSGA noticed that CC "had more bruises than normal." Over the course of the day CC was quieter than normal, "acting shy" and "wasn't himself." He sat and watched television for most of the day. MUSGA said CC didn't complain about any pain and he didn't appear sick. When Laura came home from work they saw that CC had some bruises that seemed to be getting worse.

MUGSA said they called the pediatrician and sent him a photo. They were told that if the bruises got worse, they should take CC to the doctor. MUSGA said the photo was also sent to Laura's mom. They had a discussion about taking him to a clinic but they decided that he (CC) "looked too bad" and asked each other "Are they going to think we did this?" if they took him to the doctor. They decided to keep an eye on him but not to take him to the doctor at that time.

On Friday afternoon, March 29, Laura went to McCleary to celebrate her birthday with her family and left CC in the care of MUSGA. Laura's sister picked her up at about 6 PM. CC and MUSGA left the building at the same time and went to the park. They came back from the park and watched television until about 10 PM when MUSGA got CC ready for bed. During the time they were watching television, MUSGA poured himself a drink, cola and vodka. He estimated the glass was 16-20 ounces and that there were three or four shots of vodka in the glass. He said the glass was on the window sill next to the couch and that CC would have to stand on his "tippy toes" to reach it. While he saw no sign that CC had a drink from the glass, he could only assume that he had. MUSGA said he only left the room during that time for about 3 minutes.

MUSGA said he and CC took a shower together. While MUSGA was shampooing his own hair, he heard a thump in the bathtub. CC had fallen and was crying but MUSGA did not find any bumps and CC seemed fine. When CC went to bed, he kept talking to himself and MUSGA assumed that he was not going to sleep so he got CC back up. They watched television for a while longer then both went to bed about midnight.

MUSGA said he put CC in bed with him. MUSGA was sleeping next to the wall and CC was in the middle of the bed. A while later MUSGA heard a thump. He got up and found CC on the floor next to the bed. He picked CC up and he seemed fine. MUSGA said he saw no sign of concussion and CC was not crying. He said CC's eyes were open and he had a smile on his face and that the expression never changed. He thought CC was fine so he put him back to bed. When he lay down next to CC, he put his hand on CC's chest. It was at that point that he realized CC was not breathing. He grabbed CC and his phone and ran down the stairs thinking there would be someone in the lobby area that could help.

Detectives served a search warrant at the apartment and found numerous used diapers and used baby wipes that appeared to contain blood. Laura Colley declined to make a statement.

An autopsy was performed. Dr. Lacy determined that while CC had suffered injuries too numerous to count. There were specific fatal blows to the head and torso. The injuries were inconsistent with a child falling off a couch or inadvertently banging his head on a counter top. CC suffered significant internal and external injuries to the rectum consistent with penetration by an object.

II. VICTIM/WITNESS CONCERNS(SH, CJ, KH, BJ, LC, AC, SC):

On 11/18/13, I telephonically interviewed witness SH, who was an inmate at the Pierce County Jail at the same time Mr. Musga was. They in fact were in the same cell (pod) together for a period of time, and had conversations together when other inmates were not in the pod. On 7/25/13, Detectives Vold and Nist interviewed SH, and per Detective Vold's report on the same date, SH disclosed the gist of several conversations he had with Mr. Musga. SH stated to the Detectives that Mr. Musga told him that one time he had hit his victim (CC) in front of LC's (his ex-girlfriend and the victim's mother) mother and she "flipped out, so he learned not to hit the kid in front of others". SH ascertained to me that Mr. Musga had in fact told him that.

SH told Dets. Vold and Nist that Mr. Musga said that "in the past he had smacked the victim"; SH reiterated to me that Mr. Musga had indeed told him that. SH also verified that Mr. Musga told him that he, as well as CC's mother, had given CC alcohol in the past, which is what SH also told the Detectives during their interview. He also told them that Mr. Musga had thought that CC had gotten into his drink of vodka and Pepsi when he went to the bathroom on 3/29/13, and that had made CC vomit which subsequently suffocated him. SH also told me that CC would "get into things" per Mr. Musga; he would go into his mother's purse, and CC also found a "Meth pipe" at one point that Mr. Musga had evidently left under his pillow. SH lastly told me that during all the discussions they had, Mr. Musga had never at any time indicated any remorse for what he had done to CC.

On 11/18/13, I telephonically interviewed CJ, who is the mother of Mr. Musga's ex-girlfriend KR. My intent was to interview KR, but she is still of minor age. CJ told me that there is "a lot more to this story that has to do with drugs, that being Heroin". She explained that when Mr. Musga was 17 he began dating KR, who at that time was 14. CJ said that she didn't like the age difference between them, and so KR and Mr. Musga "had to sneak around" to date and see each other. CJ disclosed that KR in fact "had run away from home many times" to be with Mr. Musga, so much so that CJ had to file a request to the Court for an ARY (At-Risk Youth) petition.

CJ told me that Mr. Musga changed for the better after he got out of rehab the first time. She said that he "was an evil person when he used, when you looked into his eyes there was no soul there. He had no boundaries of right and wrong when he used". She said that he was smart, popular, sweet, and a football star before he began abusing Heroin, and he was fun to be around when he was sober. She stated that she never saw him when he was violent, but "it was a 180-degree Jekyll and Hyde change when he used".

CJ said that the Anti-Harassment Order that she applied for to restrain Mr. Musga from contact with her and KR was not due to Mr. Musga having been violent or assaultive towards her or KR.

She applied for it two days before KR (who per CJ had substance abuse issues as well) got out of rehab because she didn't want Mr. Musga to potentially influence KR to relapse. CJ stated that the dating relationship between KR and Mr. Musga was "rocky on and off" until he went to rehab his second time, where he met LC whom he subsequently started dating; thereafter he and KR finally stopped seeing each other.

CJ elaborated on the last time KR saw Mr. Musga, which was the night before he was arrested for an incident in Snohomish County. CJ said that they "quit sneaking around" (meaning that they broke up) that night, which would have been about December 7th, 2012. CJ told me that Mr. Musga had been living with his mother but she kicked him out because he was using. His friend DJ at that time was living with an Uncle of his, and they allowed Mr. Musga to stay with them. CJ stated that Mr. Musga and another friend of his allegedly stole a gun from DJ's Uncle, and Mr. Musga was arrested for it. He apparently tried to put the blame for it toward the other friend, but he evidently got off whereas Mr. Musga didn't. CJ said that his father then bailed him out of Jail, and Mr. Musga at that point went to In-patient Substance Abuse treatment for the second time.

CJ said that she and KR "overcame a lot over the last year". She said that she at first was very angry with Mr. Musga over what he did to CC, and she said that his actions were horrific. She opined, however, that at his age a life sentence for him would not be right. She said that his using drugs was not an excuse, and he needs a substantial prison sentence to pay for what he did, but she believed that he could be rehabilitated if given a chance. She based this opinion on what a good person he was when he wasn't using drugs, and she felt that if he could permanently stay off them he could be restored to the former Jake.

On 11/18/13, I telephonically interviewed KH, who is the downstairs neighbor of the apartment where Mr. Musga used to live; KH lives in apartment # 207, and Mr. Musga used to live in apartment # 307. When Detective Yenne was taking evidence out of the apartment building on 3/30/13, KH approached him and told him that she heard "fighting and stomping from above"; and she "could not hear voices, only loud thumping noises" per Detective Yenne's report from 4/10/13. KH verified that this was true of that night as she had told Detective Yenne of it. She also told me that the noise started at about 11 PM on the night of 3/29/13, and went on until around 1:30 AM on 3/30/13. KH said, as was noted in the police report, that it was so loud at that time that she went up to # 307 to complain. She is wheelchair-bound, and when she got up to Mr. Musga's former apartment she heard a baby inside crying as she knocked on the door. KH told me that despite knocking and saying that she'd call the police if the noise went on, no one came to the door; however, the baby did stop crying after her having knocked on the door, so she left. She went back down to her apartment, and she didn't hear any more noise for the rest of the night. KH stated that after getting back into her own place and going back to bed, the time was about 2 AM.

I attempted to telephonically contact BJ, father of Mr. Musga's victim CC, on 11/14/13. When I dialed the number I was provided, I got a voice mail prompt, and I left a message asking that he return my call. As of the date this report was filed, I have not heard back from him.

I attempted to telephonically contact LC, mother of Mr. Musga's victim CC, on 11/14/13. When I dialed the number I was provided, I got a recorded message saying that the number was disconnected and was no longer in service.

I attempted to telephonically contact AC, who was noted as a witness in this matter, on 11/15/13. When I dialed the number I was provided, I got a voice mail prompt, and I left a message asking that he return my call. As of the date this report was filed, I have not heard back from him.

I attempted to telephonically contact SC, who was noted as a witness in this matter, on 11/15/13. When I dialed the number I was provided, I got a voice mail prompt, and I left a message asking that he return my call. As of the date this report was filed, I have not heard back from him.

III. MR. MUSGA'S STATEMENT REGARDING OFFENSE:

I met with Mr. Musga at the Pierce County Jail on the afternoon of November 8, 2013 to interview him for this PSI; he was dressed in regular Jail clothing and appeared to be lucid. Also present was his attorney Keith Hall. Mr. Musga admitted to having committed these crimes that he had already pled guilty to; he said that "it was his choice to drink, and it had a huge effect on what happened". He said that "without the alcohol things wouldn't have happened as they did". He said that he "is taking full responsibility" and reiterated that it was his choice to drink in that situation. He said that the "ordeal hurt a lot of people and to make up for it, he chooses to admit to it, and to serve the time" in prison for it.

IV. CRIMINAL HISTORY:

SOURCES:

1. National Crime Information Center (NCIC) and Washington Crime Information Center (WASCIC).
2. Washington State Department of Corrections Offender Database.
3. Superior Court Operations Management Information System (SCOMIS).
4. Law Enforcement Support Agency (LESA).
5. District Court Information System (DISCIS).

Juvenile Felonies:

None documented or found.

Adult Felony:		
Date of Offense:	Count I: 3/30/13; Count II: Between 3/29/13 and 3/30/13	
Crime:	Count I: Murder in the First Degree Count II: Rape of a Child in the First Degree	
County / Cause:	Pierce / 13-1-01369-1	
Date of Sentence:	11/18/13 (Pending)	
Disposition:	Pled Guilty/awaiting Sentencing	Score: 2 (both)

Misdemeanor(s): Misdemeanors do not affect the offender score but do reflect the offender's view of societal values and should be acknowledged by the Court.

Juvenile Misdemeanors: *None documented or found.*

Adult Misdemeanor:	
Date of Offense:	6/25/12
Crime:	Violation Of Anti-Harassment Order
Court/Cause No.:	Marysville Municipal Court/ C14443A
Date of Sentence:	8/31/12
Disposition:	364 days jail/362 days susp/2 yrs. Bench probation

V. SCORING:

	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I	XV	2	From 111-147 months, up to life
Count II	XII	2	From 261-347 months, up to life

VI. COMMUNITY CUSTODY:

	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I	XV	2	36 months
Count II	XII	2	Lifetime

VII. RISK / NEEDS ASSESSMENT:

A risk / needs assessment interview was completed with the offender. The following risk / needs area(s) and strengths have implications for potential risk, supervision, and interventions. Unless otherwise noted, the following information was provided by the offender and has not been verified.

Criminal History:

See Section IV above. It is to be noted that there is an active Bench Warrant for Mr. Musga's arrest, which was issued from the Snohomish County Superior Court on 5/15/13. It was ordered for his failing to appear there for a Motion Hearing on 5/14/13 for Cause 13-1-00854-2, wherein the charge is Theft of a Firearm. Mr. Musga was at that time in custody in the Pierce County Jail for his current charges.

Mr. Musga also stated that as a juvenile; he did three days' Anger Management classes for having committed an assault at about age 12. As well, he had a Theft case in which he stole a candy bar from a Safeway store when he was 17; he believed the charges were dropped for that incident.

Education / Employment:

Employment is a primary socialization structure in our culture. Lack of consistent employment reflects a higher risk for, or return to criminal behavior. A history of poor job performance and attitude signifies disregard for pro-social reinforcement. Overall academic achievement is related to stability and a crime-free lifestyle.

Mr. Musga went as far as part of the 12th grade in school at Arlington High School in Arlington, Washington. He started there in 2008 and was there until late 2011 or early 2012. He did not graduate as he was suspended for "having a paint ball gun in his car, as well as drug paraphernalia to include tinfoil". He said that after he was suspended he went to work and thereafter went back to school at Arlington High School, but was told that he could graduate from there. He then went to Weston Alternative High School in Arlington for two weeks, then left there and went to the Youth Build Program to get a diploma, and also to get some job experience in the construction field. He said he couldn't go back there after being incarcerated for the Snohomish County issue, and as such, he and his mother decided that it would be better for him to go to treatment than to return to school there. Beyond Arlington and Weston high schools and the Youth Build Program, he has pursued no other formal education.

Mr. Musga's last and only job was at "Housing Hope" in Monroe, Washington. He said he started there in about September of 2012, and it was part of the Youth Build Program. He was making minimum wage and working part-time. He was there until about December 2012 or January of 2013. He left because of his situation with his aforementioned legal problem in Snohomish County, and has not worked anywhere else since. He has never been a member of the United States Armed Forces in any branch or capacity

Financial:

Financial stability and self-sufficiency are pro-social. Financial problems are considered stressors, which may be indicative of anti-social attitudes or precipitators of inappropriate ways to get money.

Mr. Musga currently possesses no assets, does not own a vehicle or property, and has no bank accounts or any source income at this time. He said that he currently has no debts, such as credit card bills or anything of that nature, except for his legal financial obligations for his previous criminal convictions, and fines for traffic infractions. He said that before being taken into custody, he had an EBT card which he used, and he was getting between \$180.00 and \$200.00 a month on it for his use. He was unable to bail out of the Pierce County Jail on this cause, and he's being legally represented by Mr. Hall in this matter, who is a private attorney; his services are being paid for by Mr. Musga's family.

Family / Marital:

A satisfying family or marital situation indicates pro-social relationships and ties that are negatively correlated with criminal risk. Uncaring, negative or hostile relationships with relatives who have frequent contact indicate poor social and problem-solving skills and a lack of pro-social modeling. Parental influence is a behavioral control that inhibits anti-social behavior and is a source of pro-social modeling.

Mr. Musga said that his parents were married for 10 years and divorced in about 2004 amicably; his father's name is Michael Musga, and he is 67 years old currently. He lives in Maple Valley, Washington, and is employed as a truck driver for High-Tech Finishes in Renton, Washington. He was present in Mr. Musga's life until he was about 10 years old, and after that Mr. Musga has seen him only about two or three times a year. He had been previously married before his marriage to Mr. Musga's mother. Mr. Musga stated that his father and he never had any major problems, and he "will love him until he dies". He "just wasn't there" after Mr. Musga was 10 years old. He added that Michael is "his own man and does his own thing." Mr. Musga also said that Michael never went to any of his football games, though he was supportive. It "just wasn't his thing." When asked how Michael would discipline him when he was a child, Mr. Musga said that his father left that to his mother, and he didn't discipline Mr. Musga at all. Michael was "the ask your mother kind of dad". Mr. Musga said that the most memorable event he had with his father was when he took him hunting; they had gone together every year at this time with their family to hunt in the mountains, and it "was bonding time" for them. Mr. Musga last saw Michael when he visited him in the Jail about a month and half ago, and to his knowledge Michael has no criminal history that he was aware of.

Mr. Musga said that neither of his parents has remarried after their divorce; his mother's name is Janet Musga and she is 53 years old. She currently lives in Arlington and works there at the AMT machine shop.

She was present throughout his entire childhood and upbringing, and mainly raised Mr. Musga herself. He considered her to be one of his best friends and gets along better with her than his father. She was always active in his life, where his father wasn't, and she went to all of his ball games. She has always been more supportive of him than his father was. When asked how Janet would discipline him when he was growing up, he said that she would put him in timeouts and never spanked or physically punished him at all. He said the most memorable event he had with her was that she "was always a team mom" for his football activities; all of his friends call him their second mom, and she was always there for all of his games. Mr. Musga said that he had just talked with his mother last night (November 7, 2013) on the phone and she visited him last weekend. She's visited him four times since he's been in the Pierce County Jail, and to his knowledge she has no criminal history that he was aware of.

Mr. Musga has two half-brothers and two half-sisters. He is his mother's only son, and all of his half siblings and he have the same father (Michael). Mr. Musga is the youngest of them all at age 19. His two brothers are Rich Musga and Chris Musga; they are 42 and 40 years old respectively. His sisters are Sarah Geigos, who is about 38 years old and Michelle Lamberton, who is 46. All of them have children who are Mr. Musga's age, except for Rich. Mr. Musga didn't grow up with them because of their age difference, but he always had lots of friends and "was mostly out with the neighbor kids"; he spent lots of time outside his home. His parents fought a lot, and after the move to Arlington when he was 11, Mr. Musga "walked all over his mother because there was no father figure in the home". Mr. Musga has never been married. He had a girlfriend for about a year named KR, who had a No Contact Order against him, and his last girlfriend was LC, mother of Mr. Musga's victim CC; he has no children of his own.

Accommodation:

A stable residence shows some ties to a neighborhood. Many changes in residence reflect insufficient neighborhood ties and could mean more exposure to or influence of pro-criminal attitudes. In a high-crime neighborhood there may be more opportunities for pro-criminal modeling and rewards for anti-social behaviors and attitudes.

Mr. Musga told me that he lived in four different residences from birth until he turned 18. The first was in Maple Valley, Washington where he lived until he was 10 years old. He said it was a decent area, but there was methamphetamine, and drug users present, and police were in the area a lot. The second, which he lived in for a year, was in Kent, Washington, in which he said there was noticeable gang activity. He and his mother then moved to Arlington, Washington, and he lived in two different residences there, which were nothing like the neighborhoods in Kent and Maple Valley and were much better localities.

After he turned 18 and went to and completed treatment, he lived with his father for about a month and then moved in with his now ex-girlfriend LC; they lived together at the Commencement Terrace Apartments in Tacoma, Washington, and he moved in there in about February of 2013. He said there was some violence going on in the area, but he stayed in the apartment and didn't go out a lot. He said he was only there for a total of five weeks or so. He said that he has never been evicted from any residence nor asked to leave one while an eviction process was ongoing.

Leisure and Recreation:

An excess of idle or discretionary time presents an added dimension of risk. Recent, regular involvement with a group of pro-social individuals is an indicator of attachment and bonds that would tend to constrain criminal activities.

As Mr. Musga claimed to have not been working prior to being arrested for this matter, he would have had a greater amount of free time as compared to another person working a full time job. He said that in his spare time he enjoys mostly sports, such as basketball and football, playing the drums, and being with people.

Companions:

The presence of criminal acquaintances and/or friends is associated with an opportunity for pro-criminal modeling, which is considered a major risk factor. A lack of pro-social companions means a diminished opportunity to observe pro-social models and no reinforcement for pro-social behaviors.

When asked how many friendships he has had over his life so far, Mr. Musga said a lot, at least 15 really close friends. He specified that it basically was his high school football team because "they were super close together". He said that his best friend is named Damon Rogers, who also goes by DJ. Mr. Musga met him when he was 12, and DJ later moved in with Mr. Musga and his mother; he lived with them until Mr. Musga turned 18. DJ evidently had a bad childhood and still lives in Arlington, and he came and visited Mr. Musga about two months ago at the Jail. Mr. Musga said that he and DJ used illegal drugs frequently when they were together. He said "they got controlled substances from all over", and DJ's mother was in fact a drug user; they obtained some other controlled substances from her. Additionally, Mr. Musga stated that the entire football team (all of whom he said he was close friends with) was into using heroin.

Alcohol / Drug Use:

A history of substance abuse is a risk factor for criminal behavior. Substance abuse erodes significant pro-social bonds that contribute to increased criminal risk. Substance misuse may facilitate or instigate criminal behavior.

Mr. Musga stated that he first tried alcohol when he was about 12 years old. He said when he was between 15 and 16 years old (in the ninth grade), he would have about three beers a week. He said that he currently only drinks alcohol five or six times a year, but when he does drink "it's a lot". He gave an example of that as being either a 12 pack of beer or a half to a fifth bottle of vodka. He said that he doesn't drink as much now, and not very often, but he reiterated that it is on the heavier side when he does drink. He said that it's a habit for him from high school to not drink as much, but "to do it big when he does". He said that he first tried marijuana when he was 13, and then at 17 he began using heroin. He used marijuana three or four times a week until the 11th grade, and that was when he began using heroin and he got away from marijuana. He smoked heroin daily, and claimed that he never used needles. He said that he last used it the night before treatment, which was in January of this year or so. He said that between using marijuana and heroin, he also use painkillers not prescribed to him, such as Percocet and Vicodin, which he got from DJ's mom as she was prescribed those. He said that he took those for about two years, but not very regularly. He claimed that when he was 18, he tried methamphetamine six times or so. Mr. Musga stated that he has been in two substance abuse treatment programs. The first one was in July of 2012 at the Olalla treatment center; it was an inpatient, twenty-one day program. The second time was for twenty-eight days and that was from December of 2012 until January of 2013 or so and was also an inpatient program. Mr. Musga claimed that he successfully completed both and in fact received certificates for them. He claimed that his father is an alcoholic and his brother Chris also is in the early stages of alcoholism. He said that his mother had "diet pill problems" when she was in her 20s and her father had alcohol problems also, from what Mr. Musga could recall.

Emotional / Personal:

Mild anxiety and depression, as well as severe emotional and cognitive problems can interfere with an individual's ability to respond to occupational, social and psychological stressors. Coping deficiencies may increase the risk of criminal behavior.

Mr. Musga said that other than concussions from playing football, he has had no other significant physical problems nor has he had any serious illnesses or injuries in the past. He said that he has never had any mental or emotional health issues diagnosed for himself. He said that he has never attempted or had ideations of suicide, but has been really sad since coming into the Pierce County Jail. He, however, has not been given any prescription for it or been diagnosed with any mental health issues about it either. He said when he was 13 or 14, he was given a prescription for Wellbutrin; this resulted from his seeing a psychiatrist because his mother thought he was depressed and he took that medication for a month and then quit taking it.

He said that at that time there was no diagnosis for any mental health issue or him, either, and that was the only time he was ~~never~~ treated by a mental health professional in his life. Mr. Musga said that to his knowledge, no members of his immediate family have ever been diagnosed with any mental health or emotional issues, nor have they ever had any treatment for such. BCC

Mr. Musga said that the most significant event in his life is his current legal issue, because he has never been in this much trouble before his life. He said that he was never sexually abused by anyone in his life at all. When he was in grade school, he was teased by other children for being fat, but he grew out of being overweight in middle school. He said that when he was 13, he was hit by a guy with a "fist pack", which had a razor blade or sharp end that extended through his fingers, because he kissed the guy's girlfriend. He said he got about 6 stitches over his left eye from it, but beyond that he has never been abused in any other way, form, or fashion in his life. Mr. Musga said that his religious preference is that of being Christian. He said he has been leading the Bible studies in his cell for the last two months. He said this was new to him since coming to the Pierce County Jail. He said when he was very young, from ages five through nine, he went to a church which he thought was Christian/Baptist, but after he moved to Arlington he got away from that. He described himself as "a people person who has had few enemies in his life". He avoids problems with people, and gets along with mostly everyone. He has always played sports, and considers himself "semi-athletic".

Attitude / Orientation:

A criminal value orientation is strongly associated with future criminal behavior, anti-social personality disorder and psychopathic tendencies. Poor attitudes and sentiments about the conviction, sentence and/or supervision tend to indicate anti-social values. Lifestyle, predicated on sensation seeking, and general acceptance of criminal orientation, is associated with poor informal social controls.

Mr. Musga, when asked about the potentially long sentence he was facing, said that he feels like he wants to go in and take responsibility for it. He said that he hopes that will allow the victim's family the help they may need in the situation. He said he thinks it's a really long time, and he sees others with similar charges with less time, but it's due to the sensitive nature of his charges. He sees why it's that long, and he is sorry for what he did. He said that he thinks his sentence should be somewhere within the range, and that everybody deserves a second chance, but he will let the judge do what he does best. He thinks the exceptional sentence the prosecutor is proposing (between 40 and 60 years) is long and he is asking for a 300 month-sentence. He said that he thinks that's still long, but he doesn't want to say this is a situation that isn't supposed to be handled or punished. He said that when he has a chance to speak in Court he wants to be able to show that he's very sorry and his sincerity about that as well.

VIII. CONCLUSIONS:

A risk assessment was completed during the pre-sentence interview. Factors which require attention to reduce Mr. Musga's risk to re-offend include his sexual deviancy, drug and alcohol dependency, and possible mental health issues. Recommended conditions in Appendix H will enable the Department of Corrections (DOC) to effectively monitor and supervise him in the community. Intervention applied to these areas would assist in reducing potential risk to community safety. Also, DOC, as a matter of policy, supervises sex offenders and violent offenders who are placed on supervision at elevated levels.

IX. SENTENCE OPTIONS:

- Confinement within the Standard Range Sentence
- Community Restitution Hours
- Exceptional Sentence
- First-time Offender Waiver (FTOW)
- Drug Offender Sentencing Alternative (DOSA)
- Special Sex Offender Sentence Alternative/SSOSA (Count II only)
- Mentally Ill Offender Sentencing Option (MIOSO)

X. RECOMMENDATIONS:

Based on information contained in the Guilty plea, I understand the Deputy Prosecutors (DPAs) in this matter intend to recommend an Exceptional sentence of 720 months, up to life, based on the aggravating factors in the State's Sentencing Memorandum that Mr. Musga 1) knew that CC was a particularly vulnerable victim due to his extreme youth; and 2) the rape and torture Mr. Musga inflicted on CC was deliberately cruel, and CC's injuries substantially exceeded the level of bodily harm necessary to sustain the elements of Murder in the First Degree. They further recommend upon release lifetime on Community Custody under the supervision of the Department of Corrections and the authority of the Indeterminate Sentencing Review Board (ISRB); to submit to a DNA test; No Contact with any minors; to Register as a sex offender in County of residence; and thereafter to register per the Sex Offender registration statute; forfeit any items in police property; to obtain a Psychosexual Evaluation; and then comply with and successfully complete any and all recommended treatment; to obtain a Substance Abuse Evaluation, and then comply with and successfully complete any and all recommended treatment; to maintain Law-Abiding behavior; to comply with conditions outlined in Appendix H, by the CCO, and on the Pre-Sentence Investigation; and Legal Financial Obligations as noted below in XI.

I am in agreement with the DPAs' recommendations, but for a somewhat lower exceptional sentence of 494 months, up to life, based on the same aforesaid aggravating factors cited by the DPAs in their Sentencing Memorandum.

This would be the equivalent of the sum at the high end of the sentence range of Counts I and II, the same total number of months if they were run consecutively. The rationale for the lower sentence is that Mr. Musga admitted to his crimes against CC and is willing to take responsibility for them. I would also add that Mr. Musga should be required to obtain a Mental Health Evaluation, and then comply with and successfully complete any and all recommended treatment as directed.

Sentence Type/Option: Confinement above the Range/Exceptional Sentence

Confinement: DPAs: 720 months, up to life; DOC; 494 months, up to life

Length of Community Custody: Lifetime

Conditions of Supervision: See attached Appendix H

XI. MONETARY OBLIGATIONS:

Restitution:	TBD	Court Costs:	\$200.00
Victim Penalty:	\$500.00	DNA:	\$100.00

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

Submitted By:

Approved By:

 11/18/13
Date

 11/18/13
Date

Joe Sofia
Community Corrections Officer 3
1016 S 28th St
Tacoma, WA 98409
253-680-2610

Karen Blatman-Byers
Community Corrections Supervisor
1016 S 28th St
Tacoma, WA 98409
(253) 680-2684

Distribution: ORIGINAL – Court COPY - Prosecuting Attorneys, J. Ausserer and A. Williams; Defense Attorney, K. Hall; File; WCC / RC (Prison)

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

STATE OF WASHINGTON

] Cause No 13-1-01369-1

] Plaintiff
v.]

] JUDGEMENT AND SENTENCE (FELONY)
APPENDIX H
COMMUNITY PLACEMENT / CUSTODY

Musga, Jake J.

] Defendant]

DOC No. 368830]

The court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

- (a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:
- (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 or alcohol, except pursuant to lawfully issued prescriptions;
 - (4) While on community custody do 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, community supervision, or both (RCW 9.94A, 120 (13));
 - (8) Notify Community Corrections Officer of any change in address or employment; and
 - (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.
- (b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:
10. Reside at a residence and under living arrangements approved of in advance by your Community Corrections Officer. You shall not change your residence without first obtaining the authorization of you Community Corrections Officer.
 11. Enter and complete, following release, a state approved sexual deviancy treatment program (if Court-Ordered) through a certified sexual deviancy counselor. You are to sign all necessary releases to ensure your Community Corrections Officer will be able to monitor your progress in treatment.
 12. You shall not change sexual deviancy treatment providers without prior approval from the Court and your Community Corrections Officer.
 13. You shall not possess or consume any mind or mood altering substances, to include alcohol, or any controlled substances without a valid prescription from a licensed physician.
 14. Have no contact with any minor children. This includes but is not limited to personal, verbal, written or contact through a third party. Contact with minor children, if any, will need to be supervised, and will require prior approval by the Sexual Deviancy Treatment Provider and the CCO.
 15. Hold no position of authority or trust involving children under the age of 18.
 16. Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason. Do not have any contact with physically or mentally vulnerable individuals.
 17. Inform your Community Corrections Officer of any romantic relationships to verify there is no victim-age children involved.

18. Submit to polygraph and plethysmograph testing upon direction of your Community Corrections Officer and/or therapist at your expense.
19. Register as a sex offender in your county of residence per current Statute.
20. Do not go to or frequent places where children congregate, (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.) unless otherwise approved by the Court
21. Submit to testing for DNA purposes, and for an HIV test.
22. Follow all conditions imposed by your sexual deviancy treatment provider and CCO.
23. Obey all laws.
24. Obtain a Mental Health Treatment Evaluation, and follow any and all recommended treatment until successfully completed.
25. Obtain a Substance Abuse Treatment Evaluation, and then follow any and all recommended treatment until successfully completed as directed.

DATE

JUDGE, PIERCE COUNTY SUPERIOR COURT

APPENDIX gg

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

JAKE JOSEPH MUSGA,
Plaintiff,
vs.
STATE OF WASHINGTON,
Defendant.

NO.

DECLARATION OF BARBARA
COREY

BARBARA COREY, declares and states as follows:

The attached is excerpts from the medical examiner report. It is a true and correct copy of certain excerpts from the report with one minor exception. Pursuant to General Order 2011-1 I redacted the minor child's name and said redaction is reflected as "CC".

Additionally, the report contains several new injuries which should have been investigated by Mr. Musga's defense counsel. The excerpts contain some old injuries.

SIGNED this 20th day of November, 2014.



BARBARA COREY, WSBA#11778



Pierce County

Medical Examiner's Office
3619 Pacific Avenue
Tacoma, Washington 98418
(253) 798-6494 • FAX (253) 798-2893

THOMAS B. CLARK III, MD
Medical Examiner
J. MATTHEW LACY, MD
Associate Medical Examiner
SHARON R. JOHNSON
Program Manager

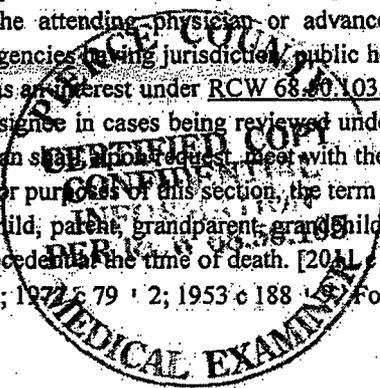
POSTMORTEM EXAMINATION REPORT

MEDICAL EXAMINER CASE #: 13-0508
NAME OF DECEASED: CC
DATE OF EXAMINATION: April 1, 2013
LAW ENFORCEMENT AGENCY AND CASE #: Tacoma Police Department 13-089-0189
CAUSE OF DEATH: Blunt force injuries of the head and abdomen
MANNER OF DEATH: Homicide

NOTICE: THIS REPORT IS CONFIDENTIAL

RCW 68.50.105 Autopsies, post mortems-Reports and records confidential-Exceptions.

Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.40.103, or the secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640. The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was the guardian of the decedent at the time of death. [2011 c 61 § 1. Prior: 2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 1. Formerly RCW 68.08.105.]



13-0508

CC

3. Old yellow-orange contusions on the right and left sides of the face and temples, most concentrated on the right side. Additionally some of the discoloration results from drying artifact of perimortem abrasions.
-

Old Injuries:

15. Small subdural neomembrane, 6 x 4 millimeters, right occipital dura.
 16. ~~Retroperitoneal granulation and scarring consistent with old blunt abdominal trauma.~~
-

Torso:

8. Multiple contusions and abrasions of the abdomen. There are at least thirteen (13) discrete violaceous to red contusions and red to red-yellow abrasions on the abdomen between the bottom of the ribcage and the waistline and concentrated on the right side of midline near the umbilicus. The contusions are generally 0.5 inches or less.
 10. Multiple contusions and abrasions of the back and buttocks. There are numerous (>30 discrete lesions) violaceous to red contusions and red to yellow-red abrasions on the back usually 0.5 inches or smaller.
-

APPENDIX hh

Pierce County Superior Court Criminal Case 13-1-01369-1

Defendant: **JAKE JOSEPH MUSGA**
 Access: Public
 Jurisdiction: SUPERIOR CT - PIERCE CTY
 Initial Arrest Date: 03/30/2013

Attorneys

Type	Name	Firm	Role
Pros	ANGELICA WILLIAMS	Prosecuting Attorney	CO COUNSEL
Pros	JARED AUSSERER	Prosecuting Attorney	LEAD COUNSEL
Defe	Richard Louis Warner		COUNSEL
Defe	Keith Robert Hall	James Newton	COUNSEL
Defe	BARBARA L. COREY		COUNSEL

Charges

Count	Type	Description	RCW	Disposition	Sentence Date
1	Original	MURDER IN THE FIRST DEGREE	<u>9A.32.030(1)(c)</u>		
	Final	MURDER IN THE FIRST DEGREE	<u>9A.32.030(1)(c)</u>	PLED GLTY AS CHGD	11/21/2013
2	Original	RAPE OF A CHILD IN THE FIRST DEGREE	<u>9A.44.073</u>		
	Final	RAPE OF A CHILD IN THE FIRST DEGREE	<u>9A.44.073</u>	PLED GLTY AS CHGD	11/21/2013

Filings

Filing Date	Filing	Access	Pages	Microfilm
04/01/2013	<u>AFFIDAVIT/ DETERMINATION FOR PROBABLE CAUSE</u>	Public	2	
04/01/2013	<u>NOTICE TO LAW ENFORCEMENT</u>	Public	1	
04/01/2013	PRE-TRIAL ELIGIBILITY REPORT	Sealed	3	
04/01/2013	<u>ORDER FOR HEARING</u>	Public	1	
04/01/2013	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2	
04/01/2013	<u>ORDER ON PRELIMINARY APPEARANCE</u>	Public	2	
04/03/2013	<u>INFORMATION & PROBABLE CAUSE</u>	Public	2	
04/03/2013	<u>AFFIDAVIT/ DETERMINATION FOR PROBABLE CAUSE</u>	Public	3	
04/03/2013	<u>NOTICE OF APPEARANCE "ARRAIGNMENT ONLY"</u>	Public	1	
04/03/2013	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2	
04/03/2013	<u>ORDER FOR HEARING</u>	Public	1	
04/17/2013	<u>NOTICE OF APPEARANCE AND REQUEST FOR DISCOVERY</u>	Public	3	
04/24/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
05/07/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
05/08/2013	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1	
05/15/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
05/31/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
06/13/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
06/26/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
08/13/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
08/13/2013	<u>ORDER FOR CONTINUANCE OF TRIAL DATE</u>	Public	1	
08/27/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
08/29/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
09/05/2013	<u>ORDER FOR HEARING</u>	Public	1	
09/09/2013	<u>CLERK'S MINUTE ENTRY</u>	Public	2	
09/09/2013	<u>STATEMENT OF DEFENDANT ON PLEA OF GUILTY</u>	Public	11	
09/09/2013	<u>STATEMENT OF DEFENDANT ON PLEA OF GUILTY</u>	Public	10	
09/09/2013	<u>PRESENTENCE INVESTIGATION ORDER</u>	Public	1	
09/09/2013	<u>ORDER ESTABLISHING CONDITIONS OF RELEASE</u>	Public	2	
09/09/2013	<u>ORDER FOR HEARING</u>	Public	1	
11/04/2013	<u>RECEIPT OF DISCOVERY</u>	Public	1	
11/14/2013	<u>MEMORANDUM "STATES"</u>	Public	100	
11/19/2013	<u>VICTIM STATEMENTS</u>	Public	11	
11/20/2013	<u>PRE SENTENCING INFORMATION REPORT</u>	Public	19	
11/21/2013	<u>CLERK'S MINUTE ENTRY</u>	Public	2	
11/21/2013	<u>NOTE DEFENSE PRESENTENCING DOCUMENTS</u>	Public	18	
11/21/2013	<u>PRE SENTENCING INFORMATION REPORT</u>	Public	18	

11/21/2013	STIPULATION TO PRIOR RECORD	Public	3
11/21/2013	ORDER FOR HEARING	Public	1
11/21/2013	AGREED ORDER RE: POWERPOINT PRESENTATION	Public	2
11/21/2013	JUDGMENT & SENTENCE & WARRANT OF COMMITMENT DOC	Public	15
11/21/2013	APPENDIX "H" TO JUDGMENT AND SENTENCE	Public	3
11/21/2013	NOTICE/ADVICE OF COLLATERAL ATTACK	Public	2
11/21/2013	ORDER FOR BIOLOGICAL SAMPLE	Public	2
11/21/2013	ORDER FOR HIV TEST	Public	2
11/21/2013	EXHIBITS RECEIVED IN VAULT	Public	1
12/05/2013	RESTITUTION INFORMATION	Confidential	7
12/05/2013	FINDINGS OF FACT AND CONCLUSIONS OF LAW	Public	6
12/05/2013	ORDER SETTING RESTITUTION	Public	2
10/30/2014	NOTICE OF APPEARANCE	Public	1



Proceedings

Date	Judge	Dept	Type	Outcome
04/01/2013 01:30 PM	CRIMINAL DIVISION 2	CD2	ARRAIGNMENT	CONTINUED
04/03/2013 01:30 PM	CRIMINAL DIVISION 2	CD2	ARRAIGNMENT	ARRAIGNED
04/23/2013 08:30 AM	CRIMINAL DIVISION 2	CD2	PRE-TRIAL CONFERENCE	HELD
04/23/2013 08:30 AM	CRIMINAL DIVISION 2	CD2	RETURN WITH ATTY	HELD
05/08/2013 01:30 PM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	OMNIBUS HEARING	CONTINUED
05/29/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	JURY TRIAL	CONTINUED
08/13/2013 02:45 PM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	OMNIBUS HEARING	CONTINUED
09/09/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	OMNIBUS HEARING	CANCELLED
09/09/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	MOTION-PREASSIGNMENT	CANCELLED
09/09/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	PLEA DATE	HELD
09/17/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	JURY TRIAL	CONTINUED
11/18/2013 08:30 AM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	JURY TRIAL	CANCELLED
11/21/2013 01:30 PM	BRYAN CHUSHCOFF	04	SENTENCING W/PSI	HELD
11/21/2013 01:30 PM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	SENTENCING DATE	CANCELLED
12/05/2013 01:30 PM	BRYAN CHUSHCOFF	04	PRESENTATION OF ORDER	HELD

Incidents

Incident Number	Law Enforcement Agency	Offense Date
130890189	TACOMA POLICE DEPARTMENT	03/30/2013

Superior Court Co-Defendants

Cause Number	Defendant
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Judgments

Cause #	Status	Signed	Effective	Filed
13-9-12421-2	OPEN as of 11/21/2013	BRYAN CHUSHCOFF on 11/21/2013	11/21/2013	11/21/2013

- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
- Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and Truancy.
- The names provided in this calendar cannot be associated with any particular individuals without individual case research.

- Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.

Created: Thursday November 20, 2014 1:22PM

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