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**SUPREME COURT OF THE
STATE OF WASHINGTON**

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STATE OF WASHINGTON
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STATE OF WASHINGTON, PETITIONER

v.

LEE GILES, RESPONDENT
MAUREEN ELIZABETH WEAR, RESPONDENT

Appeal from the Superior Court of Pierce County
The Honorable Lisa Worswick

No. 06-1-03604-4 (Giles), 06-1-03616-8 (Wear)

MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF PETITIONER.

The State of Washington, plaintiff below, asks this court to accept review of the Superior Court decision designated in part B of this petition.

B. SUPERIOR COURT DECISION.

Petitioner, State of Washington, seeks direct discretionary review of the decision of the Honorable Lisa Worswick of the Pierce County Superior Court entered on September 28, 2006 in State v. Lee William Giles, Pierce County Cause No. 06-1-03604-4, and on October 3, 2006, in State v. Maureen Wear, County Cause No. 06-1-1-03616-8, granting these co-defendants' motion to compel the State to duplicate and disseminate child pornography. Copies of these orders are attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW.

1. When the defense is requesting that the State duplicate illegal child pornography and provide it as part of the discovery process in a criminal prosecution, must a court be first satisfied that defendant has shown both prongs of CrR 4.7(e)(1) – namely that the requested disclosure is reasonable and material to the preparation of the defense - *and* must the court balance, under CrR 4.7(e)(2), whether the usefulness of the disclosure outweighs

the harm it does to the community and to the children depicted in the pornography?

2. When the prosecutor has assured the trial court that it will provide the defense: 1) viewing access to the child pornography held in evidence; 2) the opportunity, if requested, to have the defendant present at such viewing; and, 3) the ability for counsel to communicate privately with the defendant during any such showing, - has the State provided sufficient means for defense counsel to render effective assistance of counsel without the duplication and dissemination of contraband materials?

3. Does a court abuse its discretion in ordering the duplication and dissemination of illegal child pornography, before defense counsel has made any attempt to utilize the procedures offered by the State for viewing the evidence while it remains under the control of law enforcement?

4. Is convenience to defense counsel an insufficient reason to order duplication and dissemination of contraband materials under CrR 4.7(e)?

5. As there is an absence of any Washington case law addressing a defense request for duplication and dissemination of child pornography in the discovery process, should this court take

review to provide guidance to trial courts as to how to properly apply CrR 4.7 in such circumstances?

D. STATEMENT OF THE CASE.

The Pierce County prosecutor's office has charged Respondent/Defendant Lee William Giles, a retired Tacoma police officer, with 26¹ crimes, including rape of a child in the first degree, child molestation in the first degree, rape of a child in the third degree, child molestation in the third degree, possession of depictions of minor engaged in sexually explicit conduct, and possession of stolen property in the third degree in Pierce County Superior Court No. 06-1-03604-4. Appendix B. Respondent /Defendant Maureen Wear, a co-defendant of Giles and the mother of one of the victims, is currently charged with eight² crimes, including rape of a child in the first degree, rape of a child in the second

¹ The 26 counts are comprised of the following: five counts of rape of a child in the first degree; one count of attempted rape of a child in the first degree; twelve counts of child molestation in the first degree; two counts of rape of a child in the third degree; two counts of child molestation in the third degree; one count of possession of depictions of minor engaged in sexually explicit conduct; one count of voyeurism; and one count of possession of stolen property in the third degree.

² The eight counts are comprised of the following: one count of rape of a child in the first degree; two counts of rape of a child in the second degree; two counts of child molestation in the first degree; two counts of sexual exploitation of a minor; and one count of possession of depictions of minor engaged in sexually explicit conduct.

degree, child molestation in the first degree, sexual exploitation of a minor, and possession of depictions of minor engaged in sexually explicit conduct in Pierce County Superior Court Cause No. 06-1-03616-8.

Appendix C. The State intends to arraign Wear on additional charges, but this has been delayed as Wear is currently undergoing a competency evaluation at Western State Hospital. Appendix D. The victims of the charged crimes are identified as “J.W.,” “H.G.,” and “B.G.” Appendices B and C. The factual basis for these charges has been outlined in the Declarations for Determination of Probable Cause and the Supplemental Declaration. Appendix E. Trial for Giles and Wear is currently scheduled to begin January 23, 2007. Appendix D.

Giles filed a motion to compel discovery asking the court to order the State to produce “copies of any photographs, videotapes and any other documents or tangible items of evidence it intends to use at defendant’s trial”, arguing that the prosecutor was obligated under CrR 4.7(a)(1)(v) to do so. See, Appendix F, Defendant’s Motion to Compel Discovery at p. 2. Wear joined in this discovery motion. Appendix G. The State filed a response asking the court to deny the defendants’ motion. Appendix H. In its response, the State identified the nature and extent of the materials covered by the defendant’s motion as follows:

Both defendants are charged with multiple counts of child rape for raping victim J.W. The defendants videotaped many of the charged acts of child rape. There are 7 separate tapes of the defendants engaging J.W. in sex acts. There are 7 separate tapes of both Giles and Wear engaging J.W. in sex acts. There are two tapes of Wear engaging victims B.G. and H.G. in sex acts. There are two tapes of Giles sexually exploiting J.W. There are two tapes of Giles and/or Wear sexually exploiting B.G. and H.G. There is also a videotape of H.G. undressing in Giles' home and which was clearly taken by a hidden camera. In total there are 21 videotapes involving victims J.W., B.G., and H.G. There are 9 other videotapes depicting unidentified children engaged in sex acts with persons other than the defendants. There are numerous photographs and magazines depicting unidentified children engaged in sexually explicit conduct.

Appendix H at pp.1-2. A more explicit description of the contents of these tapes may be found in the Supplemental Declaration for Determination of Probable Cause. Appendix E. All of these materials are contraband material under RCW 9.68A. Appendix E. Included in the tapes showing "unidentified children engaged in sex acts with persons other than the defendants", were tapes that had been taken into evidence by the Pierce County Sheriff's Department as part of two different investigations that occurred in 1991; there were also photographs of a child undergoing a sexual assault examination at a hospital that were part of a prior investigation and prosecution which somehow ended up in Giles' possession. Appendix E, Supplemental Declaration for Determination of Probable Cause and Appendix J, 9/28 RP at 7-8.

The State contended that it had complied with its obligation to “disclose” under CrR 4.7(a)(1)(v) by informing the defense about the existence of the materials being held in evidence and advising the defense that these materials would be available for review and inspection in the property room. Appendix H at pp. 2-4. The State had also provided in discovery a detailed narrative describing the content of each videotape. Appendix I., 9/20 RP at pp.16, 22.

At the hearing on the motion to compel, it was established that neither defense attorney had made any attempt to view the contraband materials in the property room and that no expert had been retained to examine the evidence. Appendix I, 9/20 RP at 10-11, 22. The State assured the court that in addition to providing counsel with the opportunity to view the tapes, the State would also arrange for the defendant to be present at any viewing, and that arrangements could be made so that counsel could speak privately with his client during these viewings. Id., 9/20 RP 14-15, 21-22. The court granted the defense motion for duplication and dissemination of any videotape and still photograph which the State intended to introduce into evidence, subject to a protective order. Id., RP 23-24; see also Appendix K. The State sought reconsideration which was also denied. Appendix L; Appendix J, 9/28 RP 15.

The State now seeks discretionary review of the court's orders granting defendants' discovery motion. Appendix M.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. THE SUPERIOR COURT HAS COMMITTED PROBABLE ERROR AND THE DECISION SUBSTANTIALLY ALTERS THE STATUS QUO.

The State in a criminal case has a limited right to appeal under RAP 2.2(b). A pretrial discovery order does not fall into any of the categories set forth in RAP 2.2(b), which means that the only opportunity for the State to obtain review of this decision is by discretionary review. As the State is seeking review of an order not subject to direct review under RAP 2.2, it must meet the criteria set forth in RAP 2.3. That rule provides, in part:

Considerations governing acceptance of review. Except as provided in section (d), discretionary review may be accepted only in the following circumstances:

...

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

...

RAP 2.3(b). As will be more fully discussed below, the State contends that this case meets the criteria under subsection (2) above.

2. THE TRIAL COURT COMMITTED PROBABLE ERROR IN ORDERING THE STATE TO DUPLICATE AND DISSEMINATE CHILD PORNOGRAPHY WITHOUT REQUIRING DEFENDANT TO MEET HIS BURDEN UNDER CrR 4.7(e) OF SHOWING THE MATERIALITY OF THE ADDITIONAL DISCOVERY OR THAT THE REQUEST WAS REASONABLE; THE COURT FURTHER FAILED TO BALANCE THE DISCLOSURE'S USEFULNESS AGAINST THE SUBSTANTIAL HARM CAUSED BY THE DISSEMINATION OF CONTRABAND.

Generally, the scope of discovery in a criminal case lies within the discretion of the trial court. State v. Pawlyk, 115 Wn.2d 457, 470, 800 P.2d 338 (1990). The criminal rules for superior court address the obligations of a prosecutor and provide in part:

(a) Prosecutor's Obligations.

(1) Except as otherwise provided by protective orders or to matters not subject to disclosure, the prosecuting attorney shall *disclose* to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(v) any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant

CrR 4.7 (emphasis added); see also, Appendix N for text of entire rule.

The plain language of the court rule obligates the State to disclose its evidence to the defense; it does not require the prosecutor to duplicate every single item it intends to use at trial. In State v. Penn, 23 Wn. App. 202, 596 P.2d 1341 (1979), the court held that informing the defendant in discovery materials of the existence of seized "narcotics paraphernalia in general" as evidence was sufficient to fulfill the disclosure requirement of CrR 4.7 (a)(1), and to notify defendant of the existence of a rubber tubing, balloons, measuring spoons, funnels and strainers. See also, State v. Smith, 15 Wn. App. 716, 721, 552 P.2d 1059 (1976) ("CrR 4.7(a)(1)(v) requires the prosecution to *reveal the existence and nature of tangible evidence* intended for use at trial.") (emphasis added).

Defendants brought their motion to compel on the grounds that the State was required to provide copies of the materials in evidence in order to comply with its disclosure requirements under CrR 4.7(a)(1). The above cited case law indicates that defendants' interpretation of the meaning of "disclose" was in error.

When a defendant requests the disclosure of information beyond that which the prosecutor is specifically obligated to disclose under the discovery rules, the defendant's request must meet the requirements of CrR 4.7(e). State v. Blackwell, 120 Wn. 2d 822, 828, 845 P.2d 1017 (1993). This portion of the rule provides:

(e) Discretionary disclosures.

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

While rulings on discovery motions are generally reviewed for an abuse of discretion standard, it is important to note that CrR 4.7(e)(1) places an initial burden on the defendant before the court may exercise its discretion:

[A] defendant's discovery request under CrR 4.7(e)(1) *must meet two threshold requirements before the court may exercise its discretion* in granting the request: (1) the information sought must be material, and (2) the discovery request must be reasonable. If these two requirements are met, the trial court has the discretion to condition or deny the disclosure request if it finds the disclosure's usefulness is outweighed by a substantial risk of harm or unnecessary annoyance to any person.

State v. Norby, 122 Wn.2d 258, 266, 858 P.2d 210 (1993) (emphasis added). In Norby, this court found the trial court abused its discretion when it granted a discovery request when neither the materiality nor the reasonableness prong of CrR 4.7(e)(1) had been met. Norby, 122 Wn.2d

at 268. As will be more fully explained below, the trial court in this case did not hold defendants to their burden of showing (1) materiality of the information sought, and (2) the reasonableness of the discovery request, before exercising its discretion to grant the request. This constitutes probable error.

A showing that requested information is material to the defendant's defense requires more than bare assertions. In State v. Blackwell, a defense attorney convinced a trial court to order the prosecution to produce two officers' service and personnel records, because she believed the arrests made in the case may have been racially motivated.

Blackwell, 120 Wn.2d at 825. The Supreme Court reversed the trial court stating: "A defendant must advance some factual predicate which makes it reasonably likely the requested file will bear information material to his or her defense. A bare assertion that that a document 'might' bear such fruit is insufficient." Blackwell, 120 Wn.2d at 830.

Giles and Wear failed to show that having their *own copy* of the depictions in evidence was *material* to the preparation of the defense. At the hearing on the motion to compel, it was established that neither defense attorney had made any attempt to view the contraband materials in the property room and that no expert had been retained to examine the evidence. Appendix I, 9/20 RP 10-11, 22. The State assured the court that, in addition to providing counsel with the opportunity to view the tapes, it would also arrange for defendant to be present with his or her

attorney at any viewing and that arrangements could be made so that counsel could speak privately with Giles or Wear during these viewings. Id., 9/20 RP 14-15, 21-22. Defense counsel argued that it was impossible to prepare a defense without showing the evidence to the client and discussing it with him or her. Id., 9/20 RP 9-10, 11. However, the court never asked defense counsel to articulate why the State's proffered arrangements, including the opportunity to speak confidentially with defendant while viewing the evidence, were insufficient. Id., 9/20 RP 22. As neither Giles's or Wear's defense counsel made any attempt to utilize these procedures, neither counsel could articulate how these proposed procedures were inadequate or unsatisfactory based upon actual experience. Defense counsel's claim that it was necessary to have their own copy of the discovery was based on bare assertions rather than specific facts showing a concrete need. The court failed to hold defense counsel to the burden of showing materiality under CrR 4.7(e)(1).

Essentially, defense counsel argued that it would be more convenient to prepare for trial if each was given his or her own copy of the contraband materials. Appendix I, 9/20 RP 9-11. Defense also argued that if the prosecutor got to have his own copy of the materials, than defense counsel should be given a copy, too. Appendix J, 9/28/RP 11. Defense counsel is mistaken as to what the prosecutor possesses. The prosecutor in this case does not have his "own copy" of the contraband; he too, would examine the evidence in the property room. See, Appendix D.

Convenience of counsel is an insufficient reason for order the duplication and dissemination of contraband materials.

Moreover, because the State assured defense counsel would be able to access the materials held in evidence, the demand that each defense counsel get their own copy of the materials was unreasonable. Defense counsel was asking the court to produce additional copies of contraband materials without making any effort to see if preparation was possible under the terms offered by the State. The goal of the Legislature in enacting RCW 9.68A et seq. was to confiscate illegal depictions of minor engaged in sexually explicit conduct, and punish those who created it or possessed it. The Legislative goal was to reduce the amount of child pornography in Washington, not increase it. There is considerable irony that the prosecution against defendants Giles and Wear has resulted in a ruling which will triple the known number of copies of these particular illegal materials. Asking courts to order the duplication and dissemination of contraband materials when alternatives exist *is* unreasonable. The court failed to hold defense counsel to the burden of showing reasonableness under CrR 4.7(e)(1). As defense counsel failed to meet its threshold burden of showing both prongs of CrR 4.7(e)(1), the court abused its discretion in granting the discovery request.

The court's orders granting discovery also substantially alter the status quo. The Legislature has enacted laws against the duplication and dissemination of child pornography in RCW 9.68A et seq., yet the court

orders are contrary to these provisions. The Legislature has described the prevention of sexual exploitation as a governmental objective of “surpassing importance,” RCW 9.68A.001, yet the court order increases the amount of illegal material within the borders of this state. Law enforcement officers, including prosecutors, are charged with investigating and prosecuting people that duplicate and possess child pornography; yet the court’s orders require these state agents to now participate in the very activities they seek to eliminate and punish. The victims depicted on these videotapes have the added embarrassment and concern that the number of videotapes documenting their exploitation are increasing rather than diminishing. The opportunity for these images to be stolen or copied improperly and disseminated further has increased threefold. Before these additional harms occur, this court should take review to determined whether the court properly assessed the situation under CrR 4.7(e).

Finally, the superior court is authorized to deny a discretionary discovery request if “there is a substantial risk to any person of physical harm, intimidation, . . . unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defendant.” CrR 4.7(e)(2). This court has noted that this provision “calls for a balancing of the interests at stake.” State v. Gonzalez, 110 Wn.2d 738, 747, 757 P.2d 925 (1988).

In Gonzalez, the defense wanted to depose a rape victim regarding the names of her prior sexual partners. When the victim refused to answer the questions, even upon threat of being jailed for contempt, the court suppressed her trial testimony –a ruling that effectively terminated the case. Ultimately, this court found that Gonzalez had “failed to show even threshold materiality” of the requested information, and held the trial court erred in ordering the disclosure, but it took the opportunity to “provide guidance to trial courts in this complicated and sensitive area.” 110 Wn.2d at 746-747. The Supreme Court noted that the case “pits an alleged rape victim’s interest in keeping private her past sexual behavior against a defendant’s right to gather information in preparing his defense.” 110 Wn.2d at 742. After discussing the powerful interests on both sides of the issue, the court concluded:

The balance of these interests, however, will vary greatly depending on the facts of any given case. The strength of the defendant’s interest will, of course, depend on the degree to which he can show that the evidence will be material to his defense, and the strength of the complaining witness’s interest will vary with the extent to which the questions require her to reveal sensitive elements of her previous sexual history. This test admits no simple answers. However, it provides a framework for a fair resolution of a most difficult problem.

Gonzalez, 110 Wn.2d at 748.

Just as the court gave guidance to trial courts in rape cases in Gonzalez, this court needs to take review in this case to provide guidance

to trial courts in this complicated and sensitive area of discovery of child pornography. On one side of the issue is the governmental objective – one of surpassing importance - in preventing the sexual exploitation of children, including preventing duplication and dissemination of child pornography; the harm to the children depicted in the videotapes when these materials are viewed or duplicated; and the harm done when a court seemingly promotes an activity that society condemns. On the other side is a criminal defendant’s right to prepare a defense. Recently, Congress passed the Adam Walsh Child Protection and Safety Act of 2006, H.R.4472, §504, amending Section 3509 of Title 18 of the United States Code, to preclude the duplication³ and dissemination of child pornography in the criminal discovery process in federal prosecutions as long as the Government made the materials reasonably available to the defense for viewing, inspection, or examination at a Government facility. Congress clearly believes that it is possible for a defense attorney to prepare for trial without having his own copy of the child pornography at issue. This court is in control of the discovery rules in Washington and needs to provide guidance in this sensitive area.

³ Previously, the federal criminal discovery rules required the government was required to copy or duplicate matter it intended to use in trial.

F. CONCLUSION.

For the foregoing reasons the State asks this court to accept review of the decision below.

DATED: October 12, 2006.

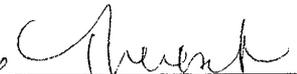
GERALD A. HORNE
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WSB # 14811

Certificate of Service:

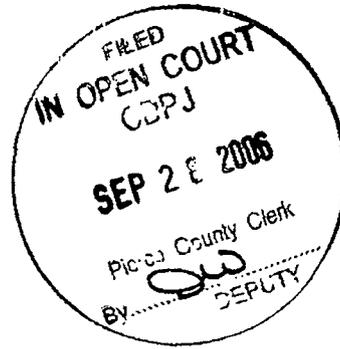
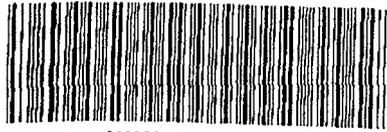
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.



Date Signature

APPENDIX “A”

*Order Granting Defendant’s Motion to Compel State to Duplicate and Produce
Child Pornography*



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL STATE TO DUPLICATE AND PRODUCE CHILD PORNOGRAPHY

Defendant.

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and provide to the defense copies of visual images of children engaged in sexually explicit conduct, if the State intends to offer such items of evidence at trial, and the Court having considered the memoranda of the parties, the arguments of counsel, and the files herein, the Court hereby FINDS:

1. There is a compelling interest to prevent further harm to children depicted in sexually explicit conduct by precluding further duplication of the images.

2. The State has offered to allow defense counsel to view the evidence in a viewing room in the Pierce County Courthouse (County-City Building). Defense counsel has to date declined this offer.

3. The compelling interest identified in #1 is outweighed by the defendant's Sixth Amendment right to the effective assistance of counsel.

1
2 4. Defense counsel cannot adequately prepare the case for trial unless he is allowed
3 unfettered access to the evidence of child pornography.
4

5 ORDER

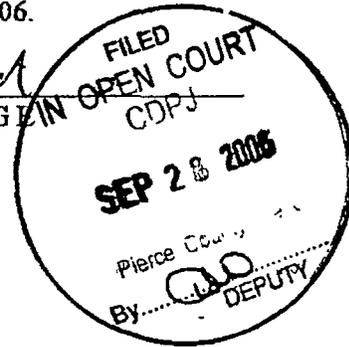
6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant's
7 motion to compel the State to duplicate and provide to defense counsel items of child
8 pornography the State intends to offer at trial is GRANTED pursuant to the conditions of a
9 protective order that shall be approved in advance by the Court.
10

Signed 9/28/06

11 DONE IN OPEN COURT this 28 day of September, 2006.

Lisa Worsrud
12

JUDGE IN OPEN COURT
CDPJ



13 Presented by:

14 *John C. Hillman*
15 JOHN C. HILLMAN
16 Deputy Prosecuting Attorney
17 WSB# 25071

18 Approved as to Form:

19 *M. Schwartz*
20 MICHAEL SCHWARTZ
21 Attorney for Defendant
22 WSB# 21024
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08-1-03616-8 26245443 ORG 10-03-06

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03616-8

vs.

MAUREEN ELIZABETH WEAR,

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL STATE TO DUPLICATE AND PRODUCE CHILD PORNOGRAPHY

Defendant.

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and provide to the defense copies of visual images of children engaged in sexually explicit conduct, if the State intends to offer such items of evidence at trial, and the Court having considered the memoranda of the parties, the arguments of counsel, and the files herein, the Court hereby FINDS:

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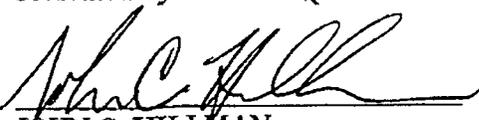
4. Defense counsel cannot adequately ^{represent her client} ~~prepare the case for trial~~ unless she is allowed ^{copies of} ~~unfettered access~~ to the evidence of child pornography. in state's possession. ^(u)

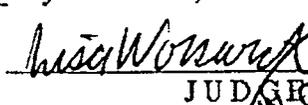
ORDER

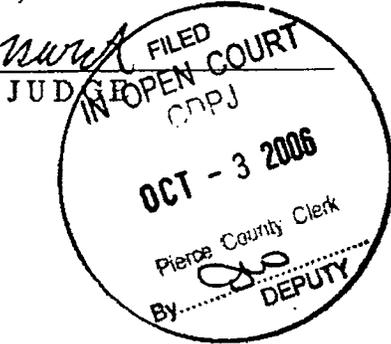
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant's motion to compel the State to duplicate and provide to defense counsel items of child pornography the State intends to offer at trial is GRANTED pursuant to the conditions of a protective order that shall be approved in advance by the Court.

DONE IN OPEN COURT this 3RD day of October, 2006.

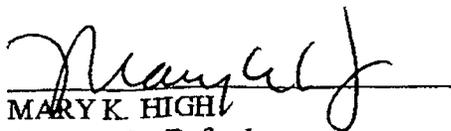
Presented by:


JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB# 25071


JUDGE WOMACK



Approved for entry, notice of presentment waived:

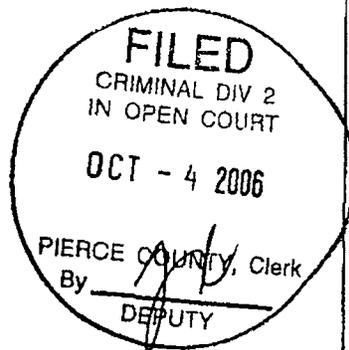

MARY K. HIGH
Attorney for Defendant
WSB# 20123

APPENDIX “B”

Amended Information



06-1-03604-4 28253284 AMINF 10-04-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

AMENDED INFORMATION

Defendant.

DOB: 10/31/1944
PCN#: 538839132

SEX : MALE
SID#: 23476409

RACE: WHITE
DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day of June, 1991 and the 20th day of June, 2000, did unlawfully and feloniously being at least 24 months older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(2)(i),¹ the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A

¹ RCW 9.94A.535 and RCW 9.94A.589 as cited throughout are formerly RCW 9.94A.120 and RCW 9.94A.390.

AMENDED INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

ORIGINAL

1 CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the
2 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
3 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
4 proof of one charge from proof of the others, committed as follows:

5 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
6 of June, 1993 and the 20th day of June, 2000, did unlawfully and feloniously being at least 24 months
7 older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old and not married to
8 the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following
9 circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW
10 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this
11 chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part
12 of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by
13 multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
14 Washington.

15 COUNT III

16 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
17 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
18 CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the
19 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
20 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
21 proof of one charge from proof of the others, committed as follows:

22 That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
23 between the 27th day of July, 1997 and the 20th day of June, 2000, did unlawfully and feloniously being
24 at least 24 months older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old
and not married to the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the
following circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy
of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of
this chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was
part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested
by multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
Washington.

25 COUNT IV

26 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
27 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
28 CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the

AMENDED INFORMATION- 2

1 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
2 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
3 proof of one charge from proof of the others, committed as follows:

4 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
5 of June, 1998 and the 20th day of June, 2000, did unlawfully and feloniously being at least 24 months
6 older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old and not married to
7 the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following
8 circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW
9 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this
10 chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part
11 of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by
12 multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
13 Washington.

14 IN THE ALTERNATIVE

15 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
16 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
17 CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on
18 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
19 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
20 proof of one charge from proof of the others, committed as follows:

21 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
22 of June, 2000, and the 20th day of June, 2002, did unlawfully and feloniously, being at least 36 months
23 older than J.W., engage in sexual intercourse with J.W., who is at least 12 years old but less than 14 years
24 old and not married to the defendant, contrary to RCW 9A.44.076, and the crime was aggravated by the
following circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy
of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of
this chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was
part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested
by multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
Washington.

COUNT V

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the
same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

AMENDED INFORMATION- 3

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
2 proof of one charge from proof of the others, committed as follows:

3 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
4 of June, 1998 and the 20th day of June, 2000, did unlawfully and feloniously being at least 24 months
5 older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old and not married to
6 the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following
7 circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW
8 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this
9 chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part
10 of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by
11 multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
12 Washington.

13 IN THE ALTERNATIVE

14 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
15 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
16 CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on
17 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
18 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
19 proof of one charge from proof of the others, committed as follows:

20 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
21 of June, 2000 and the 20th day of June, 2002, did unlawfully and feloniously, being at least 36 months
22 older than J.W., engage in sexual intercourse with J.W., who is at least 12 years old but less than 14 years
23 old and not married to the defendant, contrary to RCW 9A.44.076, and the crime was aggravated by the
24 following circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy
of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of
this chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was
part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested
by multiple incidents over a prolonged period of time, and against the peace and dignity of the State of
Washington.

25 COUNT VI

26 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
27 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of ATTEMPTED
28 RAPE OF A CHILD IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
29 based on the same conduct or on a series of acts connected together or constituting parts of a single

1 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
2 difficult to separate proof of one charge from proof of the others, committed as follows:

3 That LEE WILLIAM GILES, or an accomplice, in Pierce County, Washington, during the period
4 between the 21st day of June, 1993 and the 20th day of June, 2000, did unlawfully and feloniously with
5 intent to commit the crime of RAPE OF A CHILD IN THE FIRST DEGREE, as prohibited by RCW
9A.44.073, take a substantial step toward the commission of that crime, contrary to RCW 9A.28.020., and
6 against the peace and dignity of the State of Washington.

7 The elements of the complete crime of RAPE OF A CHILD IN THE FIRST DEGREE are:

8 Being at least 24 months older than J.W., engage in sexual intercourse with J.W., who is less than
9 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and the crime was aggravated
10 by the following circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense
11 policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the
12 purpose of this chapter, as expressed in RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the
13 offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years
14 manifested by multiple incidents over a prolonged period of time.

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COUNT VII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 1992 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months
older than J.W., have sexual contact with J.W., who is less than 12 years old and not married to the
defendant, contrary to RCW 9A.44.083, and the crime was aggravated by the following circumstances:
pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results
in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of
sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a
prolonged period of time, and against the peace and dignity of the State of Washington.

COUNT VIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of POSSESSION
OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—WITH SEXUAL
AMENDED INFORMATION- 5

1 MOTIVATION, a crime of the same or similar character, and/or a crime based on the same conduct or on
2 a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely
3 connected in respect to time, place and occasion that it would be difficult to separate proof of one charge
4 from proof of the others, committed as follows:

5 That LEE WILLIAM GILES, in the State of Washington, on or about the 2nd day of August,
6 2006, did unlawfully, feloniously, and knowingly possess visual or printed matter depicting a minor or
7 minors engaged in sexually explicit conduct, contrary to RCW 9.68A.070, and the crime was aggravated
8 by the following circumstances: pursuant to RCW 9.94A.835, the crime was committed with sexual
9 motivation, and against the peace and dignity of the State of Washington.

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COUNT IX

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 1992 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months
older than J.W., have sexual contact with J.W., who is less than 12 years old and not married to the
defendant, contrary to RCW 9A.44.083, and the crime was aggravated by the following circumstances:
pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same
victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time,
and/or pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589
results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as
expressed in RCW 9.94A.010, and against the peace and dignity of the State of Washington.

COUNT X

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months
older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual

AMENDED INFORMATION- 6

1 contact with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW
2 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
3 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the
4 age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or pursuant to
5 RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a
presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
RCW 9.94A.010, and against the peace and dignity of the State of Washington.

COUNT XI

6
7 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
8 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
9 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
10 based on the 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:

11 That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
12 between the 21st day of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being
13 at least 36 months older than J.W., have, or knowingly cause another person under the age of eighteen to
14 have, sexual contact with J.W., who is less than 12 years old and not married to the defendant, contrary to
RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
15 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the
16 age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or pursuant to
RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a
17 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
RCW 9.94A.010, and against the peace and dignity of the State of Washington.

COUNT XII

18
19 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
20 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
21 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
22 based on the same conduct or on a series of acts connected together or constituting parts of a single
23 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:

24 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months
older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual
contact with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW

AMENDED INFORMATION- 7

1 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
2 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the
3 RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a
4 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
5 RCW 9.94A.010, and against the peace and dignity of the State of Washington.

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COUNT XIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual contact with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the State of Washington.

IN THE ALTERNATIVE

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day of June, 2000, and the 20th day of June, 2002, did unlawfully and feloniously, being at least 36 months older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual contact with J.W., who is at least 12 years old but less than 14 years old, and not married to the defendant, contrary to RCW 9A.44.086, and the crime was aggravated by the following circumstances: pursuant to

AMENDED INFORMATION- 8

1 RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a
2 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
3 RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of
4 sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a
prolonged period of time, and against the peace and dignity of the State of Washington

COUNT XIV

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
6 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
7 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
8 based on the same conduct or on a series of acts connected together or constituting parts of a single
9 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:

10 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
11 of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months
12 older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual
13 contact with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW
14 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
15 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the
16 age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or pursuant to
17 RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a
18 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
19 RCW 9.94A.010, and against the peace and dignity of the State of Washington.

IN THE ALTERNATIVE

20 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
21 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
22 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime
23 based on the same conduct or on a series of acts connected together or constituting parts of a single
24 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 2000, and the 20th day of June, 2002, did unlawfully and feloniously, being at least 36 months
older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual
contact with J.W., who is at least 12 years old but less than 14 years old, and not married to the defendant,
contrary to RCW 9A.44.086, and the crime was aggravated by the following circumstances: pursuant to
RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a

AMENDED INFORMATION- 9

1 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
2 RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of
3 sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a
4 prolonged period of time, and against the peace and dignity of the State of Washington

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COUNT XV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day of June, 1995 and the 20th day of June, 2000, did unlawfully and feloniously, being at least 36 months older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual contact with J.W., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the State of Washington.

IN THE ALTERNATIVE

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day of June, 2000, and the 20th day of June, 2002, did unlawfully and feloniously, being at least 36 months older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual contact with J.W., who is at least 12 years old but less than 14 years old, and not married to the defendant, contrary to RCW 9A.44.086, and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in

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1 RCW 9.94A.010, and/or pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of
2 sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a
3 prolonged period of time, and against the peace and dignity of the State of Washington

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COUNT XVI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
based on the 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:

That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
between the 25th day of June, 1996, and the 15th day of May, 2002, did unlawfully and feloniously, being
at least 36 months older than B.G., have, or knowingly cause another person under the age of eighteen to
have, sexual contact with B.G., who is less than 12 years old and not married to the defendant, contrary to
RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive
sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010,
and/or pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or
fiduciary responsibility to facilitate the commission of the current offense, and against the peace and
dignity of the State of Washington.

COUNT XVII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
based on the 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:

That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
between the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously, being
at least 36 months older than H.G., have, or knowingly cause another person under the age of eighteen to
have, sexual contact with H.G., who is less than 12 years old and not married to the defendant, contrary to
RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive
sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010,
and/or pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or

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1 fiduciary responsibility to facilitate the commission of the current offense, and against the peace and
2 dignity of the State of Washington.

3 COUNT XVIII

4 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
5 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
6 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
7 based on the same conduct or on a series of acts connected together or constituting parts of a single
8 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
9 difficult to separate proof of one charge from proof of the others, committed as follows:

10 That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
11 between the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously, being
12 at least 36 months older than B.G., have, or knowingly cause another person under the age of eighteen to
13 have, sexual contact with B.G., who is less than 12 years old and not married to the defendant, contrary to
14 RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
15 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive
16 sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010,
17 and/or pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or
18 fiduciary responsibility to facilitate the commission of the current offense, and against the peace and
19 dignity of the State of Washington.

20 COUNT XIX

21 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
22 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
23 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime
24 based on the 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:

That LEE WILLIAM GILES, or an accomplice, in the State of Washington, during the period
between the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously, being
at least 36 months older than H.G., have, or knowingly cause another person under the age of eighteen to
have, sexual contact with H.G., who is less than 12 years old and not married to the defendant, contrary to
RCW 9A.44.083, and the crime was aggravated by the following circumstances: pursuant to RCW
9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive
sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010,
and/or pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or

1 fiduciary responsibility to facilitate the commission of the current offense, and against the peace and
2 dignity of the State of Washington.

COUNT XX

3 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of RAPE OF A
5 CHILD IN THE THIRD 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 LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
8 of June, 2002 and the 20th day of June, 2004, did unlawfully and feloniously, being at least 48 months
9 older than J.W., engage in sexual intercourse with J.W., who is at least 14 years old but less than 16 years
10 old and not married to the defendant, contrary to RCW 9A.44.079, and the crime was aggravated by the
11 following circumstances: pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern
12 of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over
13 a prolonged period of time, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the multiple
14 offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of
the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the
State of Washington.

COUNT XXI

15 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
16 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
17 MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime
18 based on the same conduct or on a series of acts connected together or constituting parts of a single
19 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:

20 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
21 of June, 2002 and the 20th day of June, 2004, did unlawfully and feloniously, being at least 48 months
22 older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual
23 contact with J.W., who is at least 14 years old but less than 16 years old, and not married to the defendant,
24 contrary to RCW 9A.44.089, and the crime was aggravated by the following circumstances: pursuant to
RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim
under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or
pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results

1 in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
2 RCW 9.94A.010, and against the peace and dignity of the State of Washington.

3 COUNT XXII

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

10 That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
11 of June, 2002 and the 20th day of June, 2004, did unlawfully and feloniously, being at least 48 months
12 older than J.W., engage in sexual intercourse with J.W., who is at least 14 years old but less than 16 years
13 old and not married to the defendant, contrary to RCW 9A.44.079, and the crime was aggravated by the
14 following circumstances: pursuant to RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern
15 of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over
16 a prolonged period of time, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the multiple
17 offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of
18 the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the
19 State of Washington.

20 COUNT XXIII

21 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
22 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of CHILD
23 MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime
24 based on the 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:

That LEE WILLIAM GILES, in the State of Washington, during the period between the 21st day
of June, 2002 and the 20th day of June, 2004, did unlawfully and feloniously, being at least 48 months
older than J.W., have, or knowingly cause another person under the age of eighteen to have, sexual
contact with J.W, who is at least 14 years old but less than 16 years old, and not married to the defendant,
contrary to RCW 9A.44.089, and the crime was aggravated by the following circumstances: pursuant to
RCW 9.94A.535(3)(g), the offense was part of an ongoing pattern of sexual abuse of the same victim
under the age of eighteen years manifested by multiple incidents over a prolonged period of time, and/or
pursuant to RCW 9.94A.535(2)(i), the operation of the multiple offense policy of RCW 9.94A.589 results

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Tacoma, WA 98402-2171
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1 in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
2 RCW 9.94A.010, and against the peace and dignity of the State of Washington.

COUNT XXIV

3 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of VOYEURISM, a
5 crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts
6 connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect
7 to time, place and occasion that it would be difficult to separate proof of one charge from proof of the
8 others, committed as follows:

9 That LEE WILLIAM GILES, in the State of Washington, during the period between the 16th day
10 of May, 1999 and the 1st day of August, 2006, did unlawfully and feloniously for the purpose of arousing
11 or gratifying the sexual desire of any person, knowingly view, photograph, or film the intimate areas of
12 another person, to wit: B.G., without that person's knowledge and consent and under circumstances
13 where the person has a reasonable expectation of privacy, whether in a public or private place, contrary to
14 RCW 9A.44.115(2)(b), and the crime was aggravated by the following circumstance: pursuant to RCW
15 9.94A.535(3)(n), the defendant used his or her position of trust, confidence, or fiduciary responsibility to
16 facilitate the commission of the current offense, and against the peace and dignity of the State of
17 Washington.

COUNT XXV

18 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
19 authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of POSSESSION
20 OF STOLEN PROPERTY IN THE THIRD DEGREE, a crime of the same or similar character, and/or a
21 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
22 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
23 difficult to separate proof of one charge from proof of the others, committed as follows:

24 That LEE WILLIAM GILES, in the State of Washington, on or about the 2nd day of August,
2006, did unlawfully, knowingly receive, retain, possess, conceal, or dispose of stolen property, knowing
that it had been stolen, valued at \$250.00 or less, to-wit: videotapes and/or photographs, belonging to the
Pierce County Sheriff's Department, and withheld or appropriated said property to the use of any person
other than the true owner or person entitled thereto, contrary to RCW 9A.56.140(1) and 9A.56.170(1) and
9A.56.170(2), and against the peace and dignity of the State of Washington.

COUNT XXVI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse LEE WILLIAM GILES of the crime of POSSESSION
OF STOLEN PROPERTY IN THE THIRD DEGREE, a crime of the same or similar character, and/or a
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1 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
2 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
3 difficult to separate proof of one charge from proof of the others, committed as follows:

4 That LEE WILLIAM GILES, in the State of Washington, on or about the 2nd day of August,
5 2006, did unlawfully, knowingly receive, retain, possess, conceal, or dispose of stolen property, knowing
6 that it had been stolen, valued at \$250.00 or less, to-wit: videotapes and/or photographs belonging to the
7 Pierce County Sheriff's Department, and withheld or appropriated said property to the use of any person
8 other than the true owner or person entitled thereto, contrary to RCW 9A.56.140(1) and 9A.56.170(1) and
9 9A.56.170(2), and against the peace and dignity of the State of Washington.

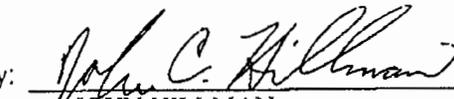
10 DATED this 4th day of October, 2006.

11 TACOMA POLICE DEPARTMENT
12 WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

13 jch

14 By:


15 JOHN HILLMAN
16 Deputy Prosecuting Attorney
17 WSB#: 25071

APPENDIX "C"

Information

August 04 2006 10:42 AM

KEVIN STOCK
COUNTY CLERK

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5
6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 06-1-03616-8

9 vs.

10 MAUREEN ELIZABETH WEAR,

INFORMATION

11 Defendant.

12 DOB: 4/7/1960

SEX : FEMALE

RACE: WHITE

PCN#: 538840092

SID#: 16044995

DOL#: UNKNOWN

13 CO-DEFENDANT: LEE WILLIAM GILES, #-06-1-03604-4

14 COUNT I

15 I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
16 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of RAPE
17 OF A CHILD IN THE FIRST DEGREE, committed as follows:

18 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
19 the 21st day of June, 1997 and the 20th day of June, 2000, did unlawfully and feloniously being at least
20 24 months older than J.W., engage in sexual intercourse with J.W., who is less than 12 years old and not
21 married to the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following
22 circumstances: pursuant to RCW 9.94A.535(3)(n), the defendant used his or her position of trust,
confidence, or fiduciary responsibility to facilitate the commission of the current offense, and/or pursuant
to RCW 9.94A.535(2)(i), the operation of the MULTIPLE OFFENSE POLICY of RCW 9.94A.589
results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as
expressed in RCW 9.94A.010, and against the peace and dignity of the State of Washington.

23 COUNT II

24 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of RAPE

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Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime
 2 based on the same conduct or on a series of acts connected together or constituting parts of a single
 3 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
 4 difficult to separate proof of one charge from proof of the others, committed as follows:

5 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
 6 the 21st day of June, 2000 and the 20th day of June, 2002, did unlawfully and feloniously, being at least
 7 36 months older than J.W., engage in sexual intercourse with J.W., who is at least 12 years old but less
 8 than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and the crime was
 9 aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(n), the defendant used his or
 10 her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current
 11 offense, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the MULTIPLE OFFENSE POLICY
 12 of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of
 13 this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the State of
 14 Washington.

15 COUNT III

16 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
 17 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of RAPE
 18 OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime
 19 based on the same conduct or on a series of acts connected together or constituting parts of a single
 20 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be
 21 difficult to separate proof of one charge from proof of the others, committed as follows:

22 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
 23 the 21st day of June, 2000 and the 20th day of June, 2002, did unlawfully and feloniously, being at least
 24 36 months older than J.W., engage in sexual intercourse with J.W., who is at least 12 years old but less
 than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and the crime was
 aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(n), the defendant used his or
 her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current
 offense, and/or pursuant to RCW 9.94A.535(2)(i), the operation of the MULTIPLE OFFENSE POLICY
 of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of
 this chapter, as expressed in RCW 9.94A.010, and against the peace and dignity of the State of
 Washington.

25 COUNT IV

26 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
 27 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of
 28 CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
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1 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
 2 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:

3 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
 4 the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously, being at least
 5 36 months older than H.G., have, or knowingly cause another person under the age of eighteen to have,
 sexual contact with H.G., who is less than 12 years old and not married to the defendant, contrary to
 6 RCW 9A.44.083, and the crime was aggravated by the following circumstance: pursuant to RCW
9.94A.535(2)(i), the operation of the MULTIPLE OFFENSE POLICY of RCW 9.94A.589 results in a
 7 presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in
RCW 9.94A.010, and against the peace and dignity of the State of Washington.

8 COUNT V

9 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
 10 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of
 CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a
 11 crime based on the same conduct or on a series of acts connected together or constituting parts of a single
 12 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:

13 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
 14 the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously, being at least
 15 36 months older than B.G., have, or knowingly cause another person under the age of eighteen to have,
 sexual contact with B.G., who is less than 12 years old and not married to the defendant, contrary to RCW
 16 9A.44.083, and against the peace and dignity of the State of Washington.

17 COUNT VI

18 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of
 19 SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime
 based on the same conduct or on a series of acts connected together or constituting parts of a single
 20 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:

21 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
 22 the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously aid, invite,
 23 employ, authorize, or cause H.G., a minor, to engage in sexually explicit conduct, knowing that such
 conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and the
 24 crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(2)(i), the operation of

1 the MULTIPLE OFFENSE POLICY of RCW 9.94A.589 results in a presumptive sentence that is clearly
2 too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace
and dignity of the State of Washington.

3 COUNT VII

4 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
5 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of
6 SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime
7 based on the 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:

8 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
9 the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully and feloniously aid, invite,
10 employ, authorize, or cause B.G., a minor, to engage in sexually explicit conduct, knowing that such
11 conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and the
12 crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(2)(i), the operation of
the MULTIPLE OFFENSE POLICY of RCW 9.94A.589 results in a presumptive sentence that is clearly
too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010, and against the peace
and dignity of the State of Washington.

13 COUNT VIII

14 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
15 authority of the State of Washington, do accuse MAUREEN ELIZABETH WEAR of the crime of
16 POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, a
17 crime of the same or similar character, and/or a crime based on the 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
18 others, committed as follows:

1
2 That MAUREEN ELIZABETH WEAR, in the State of Washington, during the period between
3 the 25th day of June, 1996 and the 15th day of May, 2002, did unlawfully, feloniously, and knowingly
4 possess visual or printed matter depicting a minor engaged in sexually explicit conduct, contrary to RCW
9.68A.070, and against the peace and dignity of the State of Washington.

5 DATED this 4th day of August, 2006.

6 TACOMA POLICE DEPARTMENT
WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

7
8 jch

By: /s/ JOHN HILLMAN
JOHN HILLMAN
Deputy Prosecuting Attorney
WSB#: 25071

APPENDIX "D"

Declaration of John Hillman

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6 IN THE SUPREME COURT
7 OF THE STATE OF WASHINGTON
8

9 STATE OF WASHINGTON,

10 Petitioner,

NO.

11 v.

DECLARATION OF JOHN HILLMAN

12 LEE WILLIAM GILES, and

13 MAUREEN WEAR,

14 Respondents.

15 I, John C. Hillman, declare under penalty of perjury under the laws of the State of
16 Washington, the following is true and correct:

17 1. That I am a deputy prosecuting attorney for Pierce County and I represent
18 the State of Washington in the trial proceedings for the joined cases of State v. Lee
19 William Giles (Pierce County Superior Court #06-1-03604-4) and State v. Maureen
20 Elizabeth Wear (Pierce County Superior Court #06-1-03616-8).

21 2. Much of the State's evidence against the defendants is visual matter,
22 including 21 videotapes of the defendants themselves raping and/or molesting children.
23 Each of these 21 videotapes are depictions of minors engaged in sexually explicit conduct
24 (child pornography). There is also a plethora of other visual matter in the form of
25 videotapes, photographs, and magazines that constitutes child pornography.

1 3. The child pornography the State intends to use at trial is described in detail
2 in the discovery provided to the defense.

3 4. A Tacoma Police Department detective reviewed all of the videotapes at
4 issue and wrote a detailed narrative of their contents, which report was provided to the
5 defendants as part of discovery.

6 5. I have informed both counsel for the defendants that the visual matter at
7 issue is available to them to inspect. I have informed both counsel of the location of the
8 evidence, which is a secure police evidence room in the basement of the Pierce County
9 Courthouse.

10 6. Neither counsel for the defendants has taken the opportunity to examine the
11 evidence.

12 7. The child pornography at issue has not been duplicated as of the date of this
13 declaration, but the State is under a court order to duplicate it and the Tacoma Police
14 Department intends to begin duplicating the material pursuant to the court's order on
15 October 17, 2006, or as soon as Giles defense counsel provides blank videotapes. Wear's
16 counsel has done so.

17 8. I do not have copies of the child pornography, nor does any other member
18 of the Pierce County Prosecuting Attorney's Office. I do not need copies and if it became
19 necessary for trial preparation, I will view the evidence in the aforementioned Pierce
20 County Property Room.

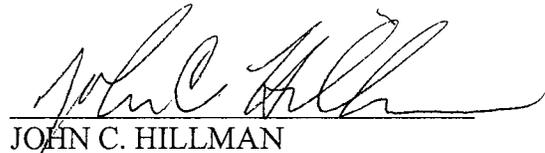
21 9. Trial in this case is currently set for January 23, 2007. An omnibus hearing
22 is scheduled for November 15, 2006. Defendant Wear's case is currently suspended while
23 awaiting the outcome of a competency evaluation. Wear has a competency hearing
24
25

1 scheduled for October 26, 2006, although it is not expected that the evaluation will have
2 been completed by that time.

3 10. As soon as an order finding Wear competent is entered, the State intends to
4 file an amended information charging Wear very consistently with the amended
5 information filed in the Giles case. The State had intended to arraign both defendants on
6 amended informations, but the court ordered a competency evaluation and that Wear be
7 transported to Western State Hospital before the rearraignment could be accomplished.

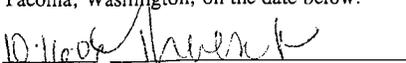
8 Dated: October 13, 2006

9 Signed at Tacoma, WA.

10
11 
12 JOHN C. HILLMAN

13 Certificate of Service:

14 The undersigned certifies that on this day she delivered by U.S. mail
15 and or ABC-LMI delivery to the attorney of record for the appellant and
16 appellant c/o his attorney true and correct copies of the document to which
17 this certificate is attached. This statement is certified to be true and correct
18 under penalty of perjury of the laws of the State of Washington. Signed at
19 Tacoma, Washington, on the date below.

20 
21 _____
22 Date Signature

APPENDIX “E”

Declarations for Determination of Probable Cause and Supplemental Declaration

August 03 2006 12:58 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

MARY E. ROBNETT, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 062020445 and the SPOKANE POLICE DEPARTMENT incident number 06-211252;

That the police report and/or investigation and/or conversations with Tacoma Police Department Detective Graham and Tacoma Police Department Detective Turner provided me the following information;

That in Pierce County, Washington, , the defendant, LEE WILLIAM GILES, did commit the crimes of **Rape of a Child in the First Degree (3 counts), Rape of as Child in the Second Degree (3 counts), Unlawful Possession of Depictions of Minors Engaged in Sexually Explicit Conduct and Sexual Exploitation of a Minor.**

On July 21, 2006, Spokane Police Department notified Tacoma Police Department of a reported crime that occurred in Tacoma. Spokane Police Department provided the following information: an 18 year old male identified as J.W., born 06-21-1988, had recently moved to Spokane County to live with his father; J.W. had previously lived with his mother in Tacoma; while J.W. lived with his mother, she was dating the defendant, Lee Giles; in June, J.W. showed his father pornography that he said had been provided to him by the defendant; on July 12, J.W. told his father that the defendant had performed oral sex (mouth-to-penis) on him on numerous occasions starting when J.W. was 9 years old and ending when J.W. was 14 or 15 years old; J.W. also disclosed that he had performed oral sex on the defendant; J.W. said the sexual contact took place in the Tacoma home of the defendant.

Tacoma Police Department requested that Spokane conduct an interview of J.W. and on July 16, J.W. reported that the defendant had performed mouth-to-penis intercourse on him on numerous occasions between 1997, when victim was age and 2002 when J.W. was 15 years old; J.W. described that he was made to perform sexual acts with his mother and J.W. described that the defendant twice put his finger in J.W.'s anus while they were in the defendant's hot tub.

Tacoma Police Detectives Turner and Graham obtained Court authorization to intercept and record communications and conversations between J.W. and the defendant. On July 31, Detectives Turner and Graham contacted J.W. in Spokane and J.W. told them the oral sex occurred about 50 times; and on August 1 the detectives were able to intercept and record a telephone conversation between the defendant and J.W.; during the conversation, J.W. asked the defendant what he should say about their

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

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930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 prior sexual contact and the defendant said "just tell them you can't remember. I can't remember nothing
2 and you can't remember nothing, right. . . . Just tell them nothing. . . . Just say nothing about it."

3 On August 2, Tacoma detectives executed a search warrant at the defendant's house and located
4 two commercial publications from the 1970's containing depictions of young children exposing their
5 genitals; detectives also seized other materials including video tapes, books, magazines, photographs and
6 photocopies; detectives also seized a computer, evidence envelopes, and court exhibits containing
7 depictions of naked children.

8 Detectives Graham and Turner contacted the defendant and asked him if he had sex with J.W.
9 and the defendant stated "You have to define sex" and he referred to Monica Lewinsky. When asked if
10 he and J.W. had oral sex, the defendant stated "Yeah" and he estimated it happened twice and he
11 confirmed they performed oral sex on each other. When asked how it started he reported that he likes
12 little boys and he likes child pornography; the defendant reported that he had made some videos of
13 himself and J.W. fondling each other; the defendant reported that his sexual contact with J.W. started
14 when "he was a little, bitty kid like 6 or 7;" the defendant reported that he grabbed child pornography
15 from drug houses while he was working; the defendant denied that there were any other children victims.

16 Detective Graham reports that a review of items seized from the defendant's residence includes
17 video recordings of the defendant engaged in sexual conduct with J.W. who appears to be prepubescent at
18 the time.

19 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
20 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

21 DATED: August 3, 2006
22 PLACE: TACOMA, WA

23 /s/ MARY E. ROBNETT
24 MARY E. ROBNETT, WSB# 21129

August 04 2006 10:42 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO.

vs.

MAUREEN ELIZABETH WEAR,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

JOHN C. HILLMAN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 062020445 and the SPOKANE POLICE DEPARTMENT incident number 06-211252;

That the police report and/or investigation and/or conversations with Tacoma Police Department Detectives Shipp and Tacoma Police Department Detective Turner provided me the following information;

That in Pierce County, Washington, the defendant, MAUREEN ELIZABETH WEAR, did commit the crimes of **Rape of a Child in the First Degree , Rape of as Child in the Second Degree (2 counts), Child Molestation in the First Degree (2 counts), Sexual Exploitation of a Minor (2 counts), and Possession of Depictions of Minors Engaged in Sexually Explicit Conduct.**

Defendant MAUREEN ELIZABETH WEAR is the mother of J.W., born 6-21-88. WEAR's date of birth is April 7, 1960. WEAR is the longtime friend of Lee Giles.

On July 21, 2006, Spokane Police Department notified Tacoma Police Department of a reported crime that occurred in Tacoma. Spokane Police Department provided the following information: an 18 year old male identified as J.W., born 06-21-1988, had recently moved to Spokane County to live with his father. J.W. previously lived with his mother, the defendant, in Tacoma. While J.W. lived with his mother, she was dating Lee Giles. In June 2006, J.W. showed his father pornography that he said had been provided to him by Giles. On July 12, 2006, J.W. told his father that Giles had sexually abused him on numerous occasions starting when J.W. was 9-years-old and ending when J.W. was 14 or 15-years-old. J.W. said the sexual contact took place in the Tacoma home of Giles.

Tacoma Police Department requested that Spokane conduct an interview of J.W. and on July 16, 2006, J.W. reported that Giles had engaged him in sex acts on numerous occasions between 1997 and 2000, when J.W. was under the age of 12, and in 2002 when J.W. was 15 years old. J.W. further described that he was made to perform sexual acts with his mother, the defendant.

Tacoma Police obtained a search warrant for Giles Tacoma residence and executed the search warrant on August 2, 2006. During the search of Giles' house police located two commercial publications from the 1970's containing depictions of young children exposing their genitals. Detectives also seized other materials including video tapes, books, magazines, photographs and photocopies.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

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1 Detectives Graham and Turner contacted Giles and Giles admitted the sexual abuse of J.W. Giles
denied, however, that he had victimized any other children.

2 Detectives Shipp and Turner reviewed some of the videos seized from Giles' house. One of the
3 videos depicts J.W. as a prepubescent child, clearly under the age of 12, inside of Giles' Tacoma home.
4 In the video the defendant, J.W.'s mother, is clearly positioning herself for the camera and has J.W.
5 inserting his finger and dildos into her vagina (**Count I—Rape of a Child 1°**). Giles is also present in the
video and is assisting and encouraging J.W. During a portion of the video, the defendant is seen perusing
a magazine. Detectives recovered this same magazine during the execution of the search warrant at
Giles' residence and it contains depictions of minors engaged in sexually explicit conduct (**Count VIII**).

6 In a second videotape, defendant is shown with two very young girls who are later identified as
7 B.G. and H.G. B.G. was born 5-16-90 and appears to be approximately 8-years-old in the video. H.G.
was born 6-25-94 and appears to be approximately 3 or 4-years-old. H.G. is wearing potty-training
8 underwear. Giles places H.G. on the bed and positions her so that her vagina and anus are exposed to the
camera. Giles then zooms the camera on H.G.'s vaginal area. Giles instructs the defendant to go get B.G.
9 Defendant returns with B.G. The children are then instructed to dress up in adult clothes, during which
time H.G. is crying. B.G. puts on a seductive adult wrap and is told by the defendant to "Go show Papa,"
referring to Giles. Giles then compliments B.G.

10 The video next shows H.G. being placed on a bed. The defendant tells H.G. that she has a diaper
rash. Defendant positions H.G. so that her vagina is exposed. Defendant proceeds to rub lotion on H.G.'s
11 thighs and her vagina in a sexual manner clearly intended for the camera (**Count IV—Child
Molestation 1°**). Defendant proceeds to rub the lotion over the rest of H.G.'s body.

12 B.G. is then placed on the bed with no clothes and she is also told that she has a rash. Defendant
13 then engages B.G. in the same lotion-rubbing scenario as occurred with H.G. (**Count V—Child
Molestation 1°**). Whenever B.G. moves her legs in the video, such that her vagina is not exposed, the
14 defendant repositions B.G.'s legs so that her vagina is exposed to the camera. The defendant at one point
has B.G. get on her hands and knees so that the camera is focused on B.G.'s vagina and anus and the
15 defendant rubs on more lotion. Throughout the video the defendant is clearly assisting in the production
of a video that includes H.G. and B.G. in sexually explicit poses. (**Counts VI and VII—Sexual
16 Exploitation of a Minor**).

17 J.W. further disclosed to police that on two occasions when he believes he was 12-years-old, he
was in a hot tub at Giles' Tacoma home with his mother (the defendant). J.W. disclosed that on each of
18 these two occasions the defendant caused him to insert his finger into her vagina. (**Counts II and III—
Rape of a Child 2°**).

19 Detectives arrested the defendant on August 3, 2006, and questioned her. Defendant admitted
that she "probably" caused J.W. to put his finger inside her vagina on two occasions while in the hot tub
20 at Giles' residence; and that there was another time in Giles' home where she caused J.W. to insert his
finger into her vagina. Detectives described for the defendant the video they had watched which depicted
21 the defendant rubbing lotion on the two young girls, who were at that time unidentified to police.
Defendant told detectives that the two girls were H.G. and B.G., identifying them by name and explaining
22 how she and Giles knew the girls. Defendant told Detectives that the house where the video was shot was
in Edgewood, WA. B.G. and H.G. still reside in Western Washington.

1 This is an ongoing investigation and the State anticipates filing additional charges when the
investigation and examination of evidence is complete.

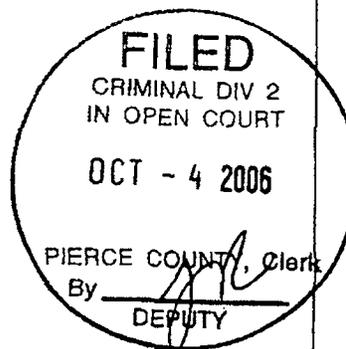
2 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
3 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

4 DATED: August 4, 2006
PLACE: TACOMA, WA

5
6 /s/ JOHN HILLMAN
JOHN C. HILLMAN, WSB# 25071

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DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -3

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

Defendant.

JOHN HILLMAN, declares under penalty of perjury:

That the Declaration for Determination of Probable Cause dated the 3rd day of August, 2006, is by reference incorporated herein;

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 062020445; the police report and/or investigation conducted by the SPOKANE POLICE DEPARTMENT, incident number 06-211252; and have had conversations with detectives for the PIERCE COUNTY SHERIFF'S DEPARTMENT;

That the police reports and/or investigations provided me the following information;

That in Pierce County, Washington, during the period between 1991 and August 2006, the defendant, LEE WILLIAM GILES, did unlawfully commit the crimes of rape of a child, child molestation, voyeurism, possession of child pornography, and possession of stolen property.

The Tacoma Police Department (TPD) had not had an opportunity to generate and file any police reports at the time this case was originally charged; nor had the majority of the visual matter seized from defendant Giles home on August 2, 2006, been reviewed by police at the time this case was originally charged. Since that time, the police have reviewed the evidence seized from Giles' home and documented the investigation in multiple police reports that the State has now had an opportunity to review. The videotapes depict an ongoing pattern of sexual abuse of victim J.W. (d.o.b. 6/21/88) by defendants Giles and Wear for over a decade.

Seized from defendant Giles' home were numerous videotapes and collections of child pornography. J.W. disclosed during a police interview that Giles raped and/or molested him on numerous occasions when he was under the age of 12 (Counts I-IX and XV). Included in the evidence seized from Giles' home are videotapes depicting Giles having sexual intercourse (oral sex) with J.W. on multiple occasions at an age when J.W. was clearly under the age of 12. The

SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE - I

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Tacoma, WA 98402-2171
Main Office (253) 798-7400

ORIGINAL

06-1-03604-4

1 video evidence seized from Giles' residence confirms J.W.'s disclosures. One videotape depicts
 2 multiple acts of child sexual abuse of J.W. (age 5 or 6) by Giles and Wear and includes Giles
 3 attempting to insert J.W.'s penis into Wear's vagina (Count VI). Another videotape depicts J.W.
 4 (approximately 5 or 6) rubbing lotion on Giles' penis and then Giles rubbing lotion on J.W.'s
 5 testicles. Another videotape depicts Giles and Wear engaging J.W. (age 5 or 6) in multiple acts
 6 of child sexual abuse, to include J.W. rubbing lotion on Giles' testicles and Wear's breasts and
 7 vagina; and both Giles and Wear rubbing J.W.'s penis. Another videotape depicts J.W. (5 or 6)
 8 rubbing lotion on Giles' penis and then Giles rubbing lotion on J.W.'s anus. Another videotaped
 9 incident depicts Giles persuading J.W. (approximately age 8 or 9) to insert a dildo into
 10 codefendant Wear's vagina, which J.W. does (Count III). The same tape wherein J.W. (age 8 or
 11 9) inserts a dildo into Wear also depicts Giles causing J.W. to touch Giles' penis. A different
 12 video also taped when J.W. was 8 or 9 depicts Giles instructing J.W. to rub lotion on Wear's
 13 vagina, which J.W. does; and then J.W. rubbing Giles' penis. Another videotaped incident
 14 depicts Giles performing oral sex on J.W. (age 11 or 12) and vice versa. J.W. is very youthful in
 15 many of the videos and clearly does not understand what is occurring. At one point, while Giles
 16 and Wear are having sexual intercourse in front of him, J.W. (age 5 or 6) asks his mother and
 17 Giles "why are you doing that?"

18 There are numerous videotapes of Giles molesting J.W. when J.W. is approximately 12
 19 but it is unclear whether J.W. is under or over 12. These videotapes depict J.W. masturbating
 20 Giles' penis (Counts XIII and XIV).

21 There are also multiple videotaped incidents of Giles assisting and filming Wear
 22 molesting B.G. and H.G.. Giles was entrusted with the care of B.G. and H.G. at the time of these
 23 crimes. In one videotape, Giles is depicted removing the pants and underwear of H.G., who
 24 appears to be approximately 3-years-old. Giles has H.G. expose her vagina and then returns to
 25 the camera to zoom-in on H.G.'s vaginal area. H.G. cries through portions of the molestation that
 26 follows. The video next depicts defendant Wear positioning both B.G. (approximately age 7) and
 27 H.G. so that their vaginal areas are exposed to the camera. Wear then proceeds to rub lotion on
 28 the vaginal areas of B.G. and H.G. in a manner described by detectives who viewed the video as
 29 "clearly sexual." Giles is operating the camera during this episode (Counts XVI and XVII). A
 second very similar incident was also videotaped in Giles' home when B.G. and H.G. were also
 approximately 3 and 7-years-old respectively (Counts XVIII and XIX).

Other videotapes depict Giles sexually abusing J.W. when J.W. is a teenager. J.W.
 disclosed to police that Giles and Wear engaged him sexual intercourse/contact on multiple
 occasions when he was a teenager (Counts XX-XXIII). The video evidence seized from Giles'
 home confirms J.W.'s account. One videotape depicts Giles first touching J.W.'s penis and then
 putting his mouth on J.W.'s penis, at which time J.W. tells him "no."

Another videotape depicts Giles masturbating J.W. and then putting his mouth on J.W.'s
 penis. During this video Giles talks to J.W. about having sex with B.G. and/or H.G. Giles and
 J.W. watch a child pornography video during this incident and at one point Giles asks J.W. if the
 girl in the video "looks 15, your age" and J.W. replies that he is only 14.

A separate videotape recorded more recently depicts Giles setting up a camera in a
 bedroom at his home. Giles leaves the bedroom. B.G., approximately her current age of 16,
 enters the bedroom in her bathing suit. B.G. appears unaware that there is a camera in the room.
 B.G. takes off her swimming suit and puts on clothes. B.G. leaves the room. Giles reenters the
 room and turns off the camera. (Count XXIV).

Police found items of evidence from prior Pierce County Sheriff's Department (PCSD)
 investigations in Giles' home when the search warrant was executed on August 2, 2006. Included
 were videotapes from a 1991 child rape investigation that depict the suspect in that case raping a
 minor female over a period of years (Count XXV). A second videotape from another 1991 PCSD
 investigation depicts a different suspect molesting a 12-13-year-old female (Count XXVI). Also

06-1-03604-4

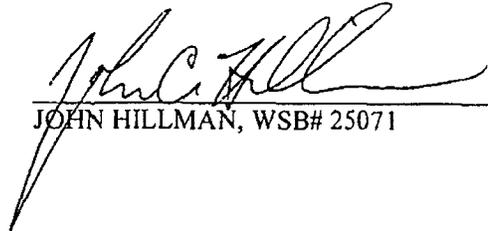
1 found in Giles' home were evidence photographs, from an unknown case, depicting a female
2 child undergoing a sexual assault examination at the hospital.

3 All of the videotapes constitute child pornography (Count VIII). Defendant created a
4 video of excerpts of his own homemade videos of rape/molests of J.W., and included in this video
5 excerpts of children being raped/molested from the videos stolen from evidence. Defendant's
6 crime of possession of child pornography was sexually motivated as defendant created and
7 possessed the child pornography for his sexual gratification.

8 Defendant Giles is a former police officer for the City of Tacoma. Giles also performed
9 duties as part of Pierce County Crimestoppers. During the time he participated in Crimestoppers,
10 Giles had an office in the Pierce County Sheriff's Department near an evidence locker that
11 contained evidence from PCSD cases. The evidence was stored in the locker awaiting
12 destruction. The items that are the subject of Counts XXV and XXVI, found in Giles' home, are
13 accounted for as "destroyed" according to records. Giles retired from TPD in 2000.

14 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
15 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

16 DATED: October 3, 2006
17 PLACE: TACOMA, WA

18 
19 _____
20 JOHN HILLMAN, WSB# 25071

APPENDIX "F"

Defendant's Motion to Compel Discovery



06-1-03604-4 28167421 MTCM 09-19-08

PIERCE COUNTY SUPERIOR COURT FILED
IN COUNTY CLERK'S OFFICE
OR THE STATE OF WASHINGTON

A.M. SEP 19 2006 P.M.

PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

NO.: 06-1-03604-4

STATE OF WASHINGTON,

Plaintiff,

vs.

LEE WILLIAM GILES,

Defendant.

**DEFENDANT'S MOTION TO COMPEL
DISCOVERY**

COMES NOW the defendant, Lee William Giles, by and through his attorney of record, Michael E. Schwartz, and moves this court for an Order compelling the State to turn over copies of photographs and videotapes held by plaintiff in preparation of trial.

This motion is brought pursuant to CrR 4.7 and is based on the subjoined memorandum and the records and files herein.

FACTS ALLEGED

On August 3, 2006, Lee William Giles was charged in the Pierce County Superior Court with three counts of Rape of a Child in the First Degree, three counts of Rape of a Child in the Second Degree, one count of Sexual Exploitation of a Minor and one count of Possession of Depictions of Minor Engaged in Sexually Explicit Conduct.

**THE LAW OFFICE OF
MICHAEL E. SCHWARTZ, INC.**
524 TACOMA AVENUE SOUTH
TACOMA, WA 98402

TEL. (253) 272-7161

ORIGINAL

1 The State has responded that while it will allow defense counsel to review those
 2 depictions in the Sheriff's Property Room, however it will not turn over any copies for fear that it
 3 would be engaging in a crime.

4 REMEDY SOUGHT

5 The defendant respectfully requests this Court order the State to turn over copies of any
 6 photographs, videotapes and any other documents or tangible items of evidence it intends to use at
 7 defendant's trial.

8 LAW & ARGUMENT

9
 10 CrR 4.7 provides the primary basis for pretrial discovery in criminal cases. The scope of the
 11 pretrial discovery may be briefly summarized by stating that, the defendant is entitled to virtually
 12 everything that is in the prosecutor's file. Police reports, statements of witnesses and laboratory
 13 reports are just a few of the things that the defendant is entitled to receive. An examination of these
 14 materials and a comparison with the products of the defense investigative effort provides the basis
 15 for the entire strategy of the defense in any case.

16
 17 Previously, the broad scope of discovery was not afforded the defendant because of possible
 18 intimidation of witnesses and the greater danger of perjury and subornation of perjury. Defendants
 19 were to find their compensation in the presumption of innocence and in the high burden of proof
 20 which must be met by the prosecution. In recent years however, the trend in criminal law has been
 21 toward the recognition and expansion of discovery techniques, both before and during trial. State v.
 22 Pawlyk, 115 Wn.2d 457, 800 P.2d 338 (1990) (reaffirming the principle of liberalized discovery).
 23
 24 In addition to the rules of discovery, a separate and distinct constitutional obligation requires the

1 prosecution to disclose evidence at trial or to the defense that is necessary to assure the accused a
 2 fair trial consistent with the Fourteenth Amendment safeguards of due process.¹

3 A criminal defendant's right to counsel is protected by the Sixth Amendment to the United
 4 States Constitution and applies to the States through the Fourteenth Amendment. The right to
 5 counsel assures "effective aid in the preparation and trial of the case" as well as the right to a
 6 lawyer. Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). The U.S. Supreme
 7 Court has held that the constitutional guarantee of effective assistance of counsel includes the right
 8 to pretrial gathering of information. Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d
 9 387 (1970).
 10

11 Besides the Constitutional obligations, the prosecutor's obligations in this context are
 12 specifically set forth under CrR 4.7(a)(1)(v):

13 Except as otherwise provided by protective orders or as to matters
 14 not subject to disclosure, the prosecuting attorney shall disclose to *the*
 15 *defendant* the following material and information within the
 16 prosecuting attorney's possession or control no later than the omnibus
 17 hearing:

18 (v) any books, papers, documents, photographs, or tangible objects,
 19 which the prosecuting attorney intends to use in the hearing or trial or
 20 which were obtained from or belonged to the defendant; (emphasis
 21 added).

22 By the plain wording of the rule, the State is obligated to turn over the photographs that it
 23 alleges form the basis of numerous felony counts against the defendant to counsel so that he can
 24 share them with the defendant and any potential expert witnesses. To deny that disclosure leaves

25 ¹ The Fourteenth Amendment prohibits any state to "deprive any person of life, liberty, or property without due
 29 process of law." Due process imposes a certain duties on law enforcement and investigative agencies to ensure that
 30

1 the defendant and his counsel at a significant disadvantage and deprives defendant of his right to
 2 effective assistance of counsel. The State's argument here, that it would be a crime for the
 3 prosecutor to turn over this information is fatally flawed at its outset. If that were the case, how
 4 does the State intend to show these depictions to a jury? How does the State intend to offer them
 5 into evidence, where they will be received by the judge and the judicial assistant? How does the
 6 State intend, in the event of a conviction, to perfect this case for appeal and transmit said depictions
 7 to the clerk of the Court of Appeals? In every courtroom across this country, on a daily basis,
 8 prosecutors and law enforcement officers enter into evidence things like stolen property, drugs, and
 9 child pornography that are in and of themselves illegal to possess, but dissemination in this fashion
 10 does not constitute a crime.
 11

12
 13 In Westerfield v. Superior Court of San Diego County, 99 Cal. App. 4th 944, 121 Cal. Rptr. 2d
 14 402 (2002), the California appellate court held that if the law categorically forbade the transfer of the
 15 images by the prosecutor to any other person, there would be no way to try a case involving depictions of
 16 minors engaged in sexual explicit conduct. See also, United States v. Lamb, 945 F.Supp. 441 (N.D.N.Y.
 17 1996) (recognizing that the participants in a criminal trial are not subject to prosecution for possession of
 18 contraband); United States v. Katz, 178 F.3d 368 (5th Cir. 1999) (holding that child pornography is
 19 subject to the same rules of discovery as other evidence).

20 In Cervantes v. Cates, 206 Ariz. 178, 76 P.3d 449, 453-454 (2004), the court held that, under
 21 facts similar to the facts in this case, unless the state could show good cause for a protective order, the
 22 defendant was entitled to copies of materials seized from him for examination, testing and reproduction.
 23 The court relied on discovery rules which provided that the prosecutor "shall . . . make available to the
 24 defendant for examination, testing and reproduction . . ."; required a party to show cause why disclosure

25
 29 every criminal trial is a search for the truth, not an adversary game. State v. James, 26 Wash. App. 522, 614 P.2d
 30 207 (1980).

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1 should be denied or regulated and provided that the burden of proof is on the party who wants
 2 protection. Cervantes, 76 P.3d at 453-454. The Cervantes court further held that the rules made no
 3 exception for contraband. 76 P.3d at 455-456. The Cervantes court also adopted the reasoning of
 4 Westerfield that it is not a crime to provide copies of the discovery to the defense, particularly after
 5 providing copies within the police department and prosecutor's office. Cervantes, 76 P.3d at 456-457.
 6 The court noted, "Arizona's child pornography laws were not aimed at prohibiting defense counsel from
 7 preparing for trial." Cervantes, 76 P.3d at 456. Cervantes should be followed here.

8 Washington's discovery rules, like Arizona's discovery rules, make no exception for disclosure of
 9 contraband and require an affirmative showing before disclosure can be limited or denied. The rules
 10 provide that the prosecution, "except as otherwise provided by protective orders . . . shall disclose to the
 11 defendant the following material and information . . . (v) any books, papers, documents, photographs, or
 12 tangible objects, which the prosecuting attorney intends to use in the hearing or trial or where were
 13 obtained from or belonged to the defendant." CrR 4.7(a)(1)(v) (emphasis added). CrR 4.7(e)(2),
 14 "discretionary disclosures," provides that the court may condition or deny disclosure "if it finds that there
 15 is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or
 16 unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness
 17 of the disclosure to the defendant."

18 Defense counsel has a fundamental duty to investigate and to make strategic trial choices only
 19 after undertaking this investigation.
 20

21 Strategic choices made after thorough investigation of law and fact
 22 relevant to plausible options are virtually unchallengeable; and strategic
 23 choices made after less than complete investigation are reasonable
 24 precisely to the extent that reasonable professional judgments support the
 25 limitations on investigation. In other words, counsel has a duty to make
 26 reasonable investigations or to make a reasonable decision that makes
 27 particular investigations unnecessary. In an ineffective case, a particular
 28 decision not to investigate must be directly assessed for reasonableness in
 29
 30

1 all circumstances, apply a heavy measure of defense to counsel's
2 judgments.

3 Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 2535, 156 L. Ed. 2d 471 (2002).

4 Due process and fundamental fairness dictate that in support of the duty to investigate, a
5 defendant must have access to evidence in the state's possession in order to independently test the
6 evidence. Barnard v. Henderson, 524 F.2d 744 (5th Cir. 1975). In Barnard v. Henderson, the Fifth
7 Circuit held that a defendant is denied due process when he is denied the opportunity to have an expert of
8 his own choosing conduct independent testing. The Court of Appeals stated that the right to independent
9 testing involves not only discovery rights, but the right to the means to conduct his own defense:
10 "Fundamental fairness is violated when a criminal defendant on trial for his liberty is denied the
11 opportunity to have an expert of his choosing, bound by appropriate safeguards imposed by the Court,
12 examine a piece of critical evidence whose nature is subject to varying expert opinion." Barnard v.
Henderson, 524 F/2d at 746.

13 The right to independent testing is an assumption of long standing in Washington. In Washington
14 v. Cohen, 19 Wn. App. 600, 604-605, 576 P.2d 933 (1987), for example, the court held that the
15 defendant's right to independent testing was not violated by the crime lab's slowness in completing its
16 testing because the defendant could have asked for a continuance. The court assumed that "the trial court
17 was willing to accommodate defendant's desire for independent tests of the evidence, but not to the
18 extent of inviting a claim of reversible error by continuing the case on its own motion, beyond the 60
19 days." Washington v. Cohen, 19 Wn. app. at 605-606. See also, State v. Russ, 93 Wn. App. 241, 245-
20 249, 969 P.2d 106 (1998) (discovery violation where the state failed to make the physical evidence
21 available for inspection).

22 In State v. Torres, 519 P.2d 788, 790-793 (Alaska App. 1998), the court stated a principle that
23 the defendant's right to independently test evidence is widely accepted. The Torres court said of Alaska
24 Criminal Rule 16, which like CrR 4.7 is derived from the federal counterpart, "[a]lthough the rule is
25 discretionary it has been interpreted to give the defendant 'virtually an absolute right' of discovery of those
29
30

1 items specified in the rule." Torres, 519 P.2d at 790-793 (quoting 1 C. Wright, Federal Practice and
 2 Procedure (Criminal) ' 253, at 500 (1969)). In Lauderdale v. City of Anchorage, 548 P.2d 376, 378-381
 3 (Alaska 1976), the court explained that the testing of evidence is like cross examination of witnesses, the
 4 purpose of which is to test the credibility of the evidence. Lauderdale, 548 P.2d at 378-381.

5 Due process also requires that the defendant be allowed to test the evidence without the early
 6 disclosure of expert information. In Wardis v. Oregon, 412 U.S. 470, 476-477, 93 S. Ct. 2208, 37 L. Ed.
 7 2d 82 (1973), the United States Supreme Court held that under the due process clause the defendant
 8 cannot be compelled to disclose to the state evidence of witnesses to be offered in support of an alibi
 9 defense absent reciprocal discovery of the state's rebuttal witnesses. In State v. Hutchinson, 111 Wn.2d
 10 872, 878, 766 P.2d 447 (1989), the court quoted from Wardius, that "[a]lthough the Due Process Clause
 11 has little to say regarding the amount of discovery which the parties must be afforded . . . it does speak to
 12 the balance of forces between the accused and his accuser." Hutchinson, 111 Wn.2d at 878. The
 13 Hutchinson court went on to say:

14
 15 The rules of discovery are designed to enhance the search for
 16 truth in both civil and criminal litigation. And, except where the
 17 exchange of information is not otherwise clearly impeded by
 18 constitutional limitations or statutory inhibition, the route of
 19 discovery should ordinarily be considered somewhat in the nature
 20 of a 2-way street, with the trial court regulating traffic over the
 21 rough areas in a manner which will insure a fair trial to all
 22 concerned, neither according to one party an unfair advantage nor
 23 placing the other at a disadvantage.

24 Hutchinson, 111 Wn.2d at 878.

25 Further, the identity and requested tasks of a defense expert are protected by the work product
 26 doctrine. United States v. Nobles, 422 U.S. 225, 238, 95 S. Ct. 2160, 445 L.Ed. 2d 1414 (1975); State v.
 27 Yates, 111 Wn.2d 793, 765 P.2d 291 (1988) (work of investigators with defense counsel is protected
 28 from disclosure).
 29
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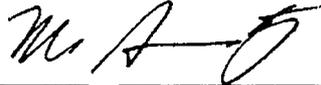
1 The trial court has broad discretion to choose the appropriate sanction for violation of the
 2 discovery rules. If, at anytime during the course of the proceedings, the court learns that a party has
 3 failed to comply with an applicable discovery rule, or order, the court may order such party to
 4 disclose the material and information, grant a continuance, dismiss the action, or enter any other
 5 appropriate order. CrR 4.7(h)(7). Moreover, any counsel who willfully violates discovery
 6 procedures under CrR 4.7 is subject to appropriate sanctions by the court. An unlawful failure to
 7 comply with an applicable discovery rule or order, therefore, may be found contempt and the
 8 offender confined to jail as a means of forcing compliance with the directive of the court. State v.
 9 Nelson, 14 Wn.App. 658, 545 P.2d 36 (1975); State v. Miller, 74 Wn.App. 334, 873 P.2d 1197
 10 (1994) (civil contempt for failure to provide handwriting exemplar to the prosecution).
 11
 12

13 CONCLUSION

14 Based on the foregoing facts and citations of law, the defendant respectfully requests this court
 15 order the State to turn over copies of any and all depictions the State intends to use in Mr. Giles'
 16 trial.
 17

18 DATED September 18, 2006.

19 LAW OFFICES OF MICHAEL SCHWARTZ, INC.

20
 21 By: 

22 MICHAEL E. SCHWARTZ, WSBA #21824
 23 Attorney for Defendant
 24

25 THE LAW OFFICE OF
 26 MICHAEL E. SCHWARTZ, INC.

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Pierce County

Office of the Prosecuting Attorney

GERALD A. HORNE
Prosecuting Attorney

REPLY TO:
CRIMINAL FELONY DIVISION
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Victim-Witness Assistance: 798-7400
FAX: (253) 798-6636

Main Office: (253) 798-7400
(WA Only) 1-800-992-2456

August 31, 2006

Michael Schwartz
Attorney at Law
524 Tacoma Avenue South
Tacoma, WA 98402

Re: State of Washington vs. Lee William Giles
Pierce County Superior Court Cause No. 06-1-03604-4

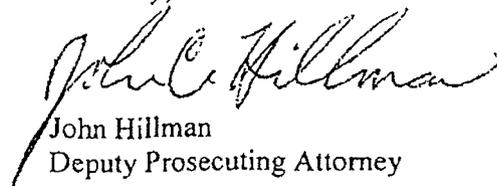
Dear Mr. Schwartz:

Please be advised that the visual matter of minors engaged in sexual activity referenced in the discovery, to include both video tapes and pictures, are available for you to view in the Pierce County Property Room located in the basement of the County-City Building. The Property Room is open from 8:30-4:00 p.m. Monday through Friday. You are welcome to make an appointment to view these materials at your convenience. The Property Room has a separate room set aside for the viewing of such matters and it includes a VCR and television set.

The State will not agree to duplicate VHS tapes or photographs that contain depictions of minors engaged in sexually explicit conduct, including video tapes of your client engaging minors in sex acts. The discovery rules require the State to "disclose" this evidence to you and we have done so. The materials are available for your inspection. The State considers these materials contraband. The RCW provides an exception for law enforcement to possess such materials during a criminal investigation or prosecution, but no other exceptions.

Additionally, the request you made of the State was to have copies of "everything you have." The number of video tapes and other visual matter seized from your client's home is voluminous and it would be unduly burdensome to copy all of these items when they are available for you to inspect them at your convenience. If you have any questions or concerns, please call me at 798-7311.

Sincerely,


John Hillman
Deputy Prosecuting Attorney



APPENDIX "G"

Motion in Support of Motion to Compel Discovery

ORIGINAL

ROOM 946
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GÉRALD A. HUMINE
PIERCE COUNTY PROSECUTING ATTORNEY



06-1-03616-8 28126558 MT 08-12-08

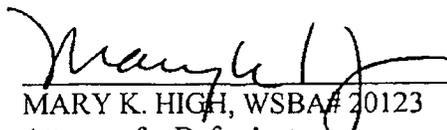
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 06-1-03616-8
vs.)	
)	MOTION IN SUPPORT OF MOTION TO
MAUREEN WEAR,)	COMPEL DISCOVERY AND JOIN IN
)	CO-DEFENDANT'S MOTION FOR THE
Defendant.)	SAME
)	

COMES NOW the above-named Defendant, by and through her attorney of record, MARY K. HIGH, and hereby requests that all books, papers, documents, photographs or tangible objects, video or audio recordings which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the Defendant, be provided to the Defendant. This motion is based on CrR 4.7(a)(1), CrR 4.7(e), the Fifth, Sixth and Fourteenth Amendment to the United States Constitution and the records and files herein.

DATED this 11th day of September, 2006.


MARY K. HIGH, WSBA# 20123
Attorney for Defendant

MOTION IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AND JOIN IN THE CO-DEFENDANT'S MOTION FOR THE SAME - 1 of 1

APPENDIX "H"

*Response to Motion to Compel State to Give
Child Pornography to Defense Counsel*



06-1-03604-4 26177723 RSP 09-21-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES, and
MAUREEN WEEAR,

RESPONSE TO MOTION TO COMPEL
STATE TO GIVE CHILD
PORNOGRAPHY TO DEFENSE
COUNSEL

Defendants.

I. IDENTITY OF RESPONDING PARTY:

Responding party is the plaintiff, State of Washington.

II. RELIEF REQUESTED:

The State respectfully requests that the court DENY the defendants' motion to compel the State to reproduce child pornography for the defense.

III. STATEMENT OF THE CASE:

Defendants Lee Giles and Maureen Wear are charged as codefendants with multiple counts of child rape/molestation, sexual exploitation of a minor, and possession of child pornography. Both defendants are charged with multiple counts of child rape for raping victim

RESPONSE TO MOTION TO COMPEL STATE TO GIVE
CHILD PORNOGRAPHY TO DEFENSE COUNSEL - 1

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Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

ORIGINAL

1 J.W. The defendants videotaped many of the charged acts of child rape. There are 7 separate
2 tapes of the defendants engaging J.W. in sex acts. There are 7 separate tapes of both Giles and
3 Wear engaging J.W. in sex acts. There are two tapes of Wear engaging victims B.G. and H.G. in
4 sex acts. There are two tapes of Giles sexually exploiting J.W. There are two tapes of Giles
5 and/or Wear sexually exploiting B.G. and H.G. There is also a videotape of H.G. undressing in
6 Giles' home and which was clearly taken by a hidden camera. In total there are 21 videotapes
7 involving victims J.W., B.G., and H.G. There are 9 other videotapes depicting unidentified
8 children engaged in sex acts with persons other than the defendants. There are numerous
9 photographs and magazines depicting unidentified children engaged in sexually explicit conduct.
10 Defendant Giles possessed all of this visual matter when he was arrested on August 2, 2006.¹
11 The videotapes of defendants engaging J.W. in sex acts are the subject of most of the counts so
12 far alleged against defendant Giles. Most of the videotapes were not reviewed until after
13 defendant Giles was charged. The State will add additional charges against Giles pertaining to
14 victims J.W., B.G., and H.G.
15

16 The visual matter seized from Giles' home was reviewed by police detectives who took
17 painstaking efforts to carefully document the content of each videotape. A detailed narrative of
18 the contents of each videotape has been provided to the defense as part of discovery. The State
19 will provide this narrative to the court for *in camera* review if the court feels it necessary to rule
20 on the motion. The defense is welcome to review the visual matter in the Property Room and
21 compare it to the detailed narratives compiled by police.
22

23 All of the visual matter that will be used as evidence against the defendants is stored in
24 the Pierce County Property Room in the basement of the County-City Building. The State has
25

¹ All visual matter at issue was seized from defendant Giles' home during execution of a search warrant on August 2, 2006.

1 advised both defense counsel that all visual matter related to the charged crimes is available for
2 the defense to inspect and review at defense counsel's convenience. Neither counsel has
3 requested to inspect and view the visual matter. The State has not been made aware that there is
4 or will be any need for an "expert" to view the visual matter. It is hard to imagine that such a
5 need would arise as the defendants created and are depicted in the relevant videotapes.

6 Defendant Giles filed a motion for an order compelling the State to duplicate and provide
7 to the defense visual matter depicting minors engaged in sexually explicit conduct. Defendant
8 Wear has joined in the motion. The State has declined the request.

9
10 **IV. LAW AND ARGUMENT:**

11 Defendants request that the State provide actual copies of graphic visual matter that
12 depicts the two defendants engaged in sex acts with minor. In considering the defendants'
13 motion, the court should keep in mind (a) the defendants made these videos, (b) the defendants
14 included themselves in the videos, and (c) the children are individuals who are very well known
15 to the defendants—their ages and identities are a non-issue. Defense counsel have direct access
16 to the persons who know more about the videotapes than anyone else.

17
18 The State has made all of this visual matter available for defense counsel's inspection and
19 review. The State is also willing to assist and facilitate if either defense counsel feels the need to
20 watch their clients engaging children in sex acts while their clients are present with them.

21 The scope of discovery in a criminal case lies within the discretion of the trial court.
22 State v. Pawlyk, 115 Wn.2d 457, 470, 800 P.2d 338 (1990). The Criminal Rules provide in part:

23 **(a) Prosecutor's Obligations.**

24 (1) Except as otherwise provided by protective orders or to matters not subject to
25 disclosure, the prosecuting attorney shall *disclose* to the defendant the following material

1 and information within the prosecuting attorney's possession or control no later than the
omnibus hearing:

2 ***

- 3 (v) any books, papers, documents, photographs, or tangible objects, which the
prosecuting attorney intends to use in the hearing or trial or which were
obtained from or belonged to the defendant

4 CrR 4.7 (emphasis added). The plain language of the court rule obligates the State to disclose²
5 its evidence to the defense, not duplicate every single item. There is no need for the court to
6 deviate from the plain language of the rule: the State is required only to "disclose" its evidence
7 to the defense and that has been done in this case.
8

9 Nor is there any compelling reason to deviate from the plain language of the rule,
10 especially under the facts presented to the court. Child pornography is contraband. It's
11 possession and distribution is illegal. There is an exception for possession by law enforcement in
12 the investigation of a sex-related crime against a child, which would include the prosecution.
13 RCW 9.68A.110(4). The court and jury are required to accept items admitted into evidence,
14 even contraband, when making rulings and when deliberating. CrR 6.15(e). Defendants'
15 argument that it is illegal for the court or jury to possess contraband admitted as evidence in a
16 criminal trial is nonsensical.

17 Videotapes of defendants Giles and Wear having sex with children cannot be lawfully
18 possessed outside of court by non-law enforcement personnel. The State does not provide
19 cocaine or heroin to defense attorneys (or *pro se* defendants) in a drug trial. Child pornography
20 is no different. Under defense counsel's reasoning in this case, if the defendants were *pro se* the
21 State would have to give them copies of the very child pornography that was taken away from
22 them so they could "prepare" for trial.
23

24
25 ² "Disclosure" is defined as "[t]he act or process of making known something that was previously unknown; a
revelation of facts." Black's Law Dictionary, 7th Edition (2000). The State has "disclosed" its evidence in this case.

1 Major privacy interests are at stake. Victims have rights, too. In fact, there are far more
2 compelling reasons to restrict possession and duplication of child pornography than there is for
3 drugs. Defense counsel are asking for duplication and personal possession of videotapes of their
4 clients raping and molesting children. As noted by the United States Supreme Court, one public
5 policy purpose behind the criminalization of possession of child pornography is to avoid children
6 being repeatedly victimized by depictions of sex acts viewed and duplicated over and over again.
7 New York v. Ferber, 458 U.S. 747, 758-759, 102 S.Ct. 3348 (1982) (every time child
8 pornography is reproduced there is yet another "permanent record of the child's participation and
9 the harm to the child is exacerbated by their circulation"). There is every reason for the court to
10 restrict the production and duplication of child pornography, especially where defense counsel
11 can easily prepare for trial without it. In this case that concept cannot be overstated where
12 defense counsel could possess the child pornography and view the tapes repeatedly with the very
13 people who not only raped and molested these children, but actually created the visual record of
14 it.
15

16 Defendants can cite no Washington authority that supports their position that the court
17 should go outside the plain language of CrR 4.7. There isn't any. Instead, defendants cite case
18 law from foreign jurisdictions that do not support the motion. In Westerfield v. Superior Court
19 of Sand Diego County, defense counsel requested copies of "thousands" of computer digital
20 images that were the subject of child pornography charges. Westerfield v. Superior Court of
21 Sand Diego County, 99 Cal.App. 4th 994, 121 Cal.Rptr.2d 402 (2002). The trial court denied the
22 motion, but the California Court of Appeals reversed. Id. Westerfield is not binding upon this
23 court and, more importantly, the facts are dissimilar. Westerfield involved "thousands" of digital
24 computer images and it was impractical for defense counsel to view all of it.
25

1 Here, unlike Westerfield, there is a manageable amount of visual matter for defense
2 counsel to review. The State has made all visual matter related to the charged crimes available
3 for defense counsel's inspection at defense counsel's convenience.

4 Defendant cites an Arizona case that relies on an Arizona discovery rule completely
5 different from Washington's. In Cervantes v. Cates, the court held that an Arizona court rule
6 requiring the prosecution to make its evidence available to the defense for "examination,
7 testing, *and reproduction*" required the State to reproduce child pornography from the defense.
8 Cervantes v. Cates, 206 Ariz. 178, 76 P.3d 449 (2003). Notably absent from Washington's CrR
9 4.7 is a requirement that the State "reproduce" tangible items and visual matter.

10 Nor was this an oversight. Many of Washington's court rules are clearly patterned after
11 the Federal Rules. The Federal Rules state in part:

12 Government's Disclosure. (a)

13 (1) Information Subject to Disclosure.

14 ***

15 (E) Documents and Objects. Upon a defendant's request, the government must permit
16 the defendant to inspect and to copy or photograph books, papers, documents, data,
17 photographs, tangible objects, buildings or places, or copies or portions of any of these
18 items, if the item is within the government's possession, custody, or control and:

- 19 (i) the item is material to preparing the defense;
20 (ii) the government intends to use the item in its case-in-chief at trial; or
21 (iii) the item was obtained from or belongs to the defendant.

22 Fed. R. Crim. Proc. 16. The federal rules, like Arizona's, clearly require the prosecution to
23 "copy" or "reproduce" visual matter. Our Supreme Court specifically declined to include such
24 language when it adopted CrR 4.7 in 1986 and amended it in 2005. This was no oversight.
25 Cervantes and similar federal cases have no application to CrR 4.7 and Washington's discovery
rules. The plain language of CrR 4.7 requires the State only to "disclose" the materials to the
defense and that has been accomplished in this case.

1 Defendants claim they "may" have to share the videotapes with an expert. It is hard to
2 imagine for what purpose. The children in the videotapes are very well known to each of the
3 defendants and they are clearly minors. Defendants created these materials and are therefore
4 acutely familiar with the location, time, and method of production of the tapes. The evidence at
5 issue is not digital visual matter that can be manipulated by computer and thus might require
6 examination by an expert. It is very hard to fathom why an expert would become necessary in
7 this case. But, if defense counsel can identify a need and an expert that needs to review a
8 particular piece of visual matter, the State will facilitate and such can be accommodated by
9 future order of the court with appropriate protection orders attached. The State routinely assists
10 in transporting biological evidence for DNA testing, or drugs for drug testing, to defense experts
11 for analysis. The defense is routinely required to articulate why there is a need for testing, and
12 who the evidence should be delivered to. This case should be no different.

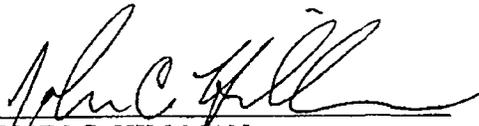
13
14 Defendants cannot offer this court a good reason why their counsel need to view the
15 defendants engaging children in sex acts in the privacy of their offices as opposed to the viewing
16 room in the basement of this building. There isn't a good reason.

V. CONCLUSION:

Defendants' motion must be denied. The State has complied with the letter and spirit of CrR 4.7. The materials at issue are available for defense examination, inspection, and viewing.

RESPECTFULLY SUBMITTED this 20th day of September, 2006.

GERALD A. HORNE
Prosecuting Attorney

By: 
JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB # 25071

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APPENDIX "I"

Verbatim Transcript of Proceedings

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	Superior Court
v.)	No. 06-1-03604-4
)	06-1-03616-8
LEE WILLIAM GILES,)	
MAUREEN ELIZABETH WEAR,)	EXCERPT
)	
Defendant.)	

VERBATIM TRANSCRIPT OF PROCEEDINGS

September 20, 2006
Pierce County Courthouse
Tacoma, Washington
Before the
Honorable Lisa Worswick

Suzanne L. Trimble, CCR, RPR
Official Court Reporter
Department 16 Superior Court
(253) 798-6632

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A P P E A R A N C E S

For the State of Washington:
JOHN HILLMAN
DEPUTY PROSECUTING ATTORNEY

For the Defendant Maureen Wear:
MARY KAY HIGH
DEPARTMENT OF ASSIGNED COUNSEL

For the Defendant Lee Giles:
MICHAEL SCHWARTZ
ATTORNEY AT LAW

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(No witnesses heard.)

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(No exhibits marked or admitted.)

1 majority of those are conducive to reproduction, that include
2 photographs and videotapes.

3 In my original request to the State, I had requested
4 for them to make copies of those in some format and indicated
5 that I would provide them with either blank CD's or blank
6 videotapes or to pay for that reproduction. The response I
7 got from the State was that they believed the matter to be
8 contraband.

9 Their suggestion was that I could contact the property
10 room and go down there, set up an appointment and then go
11 down there and view those materials there. What I'm asking
12 the court to do is to order the State to make copies of those
13 items and provide them to the defense. I should also mention
14 the other portion of the letter. The State also said because
15 there's so many items, it would be unduly burdensome for the
16 State to reproduce everything that was in their possession
17 that they seized from the defendant's house.

18 It appears that they are basing this on -- for two
19 different bases. One, it's unduly burdensome for the State
20 to produce, and second because they believe the items
21 constitute contraband, and while they're entitled to possess
22 them, no one else is.

23 The State correctly points out that Criminal Rule 4.7
24 requires that except as otherwise provided by protective
25 orders or as to matters not subject to disclose or

1 disclosure, the prosecuting attorney shall disclose to the
2 defendant the following material and information within the
3 prosecuting attorney's possession or control no later than
4 the omnibus hearing, and then in subparagraph five, it goes
5 through all books, papers, tangible objects and photographs.

6 What the State is arguing here is that the term
7 "disclosure" should have a very narrow definition. The
8 defense argument here is that disclosure should have a broad
9 definition as it's always been interpreted under, not only
10 the opinions of the court of appeals and state supreme court,
11 but also the federal district courts and court of appeals.
12 Your Honor, I cite a number of -- in my brief, I cite a
13 number of cases that are authority for the proposition that
14 the State should be required to turn this over to us.

15 I want to point out what the overarching reason for the
16 cases that have found that the State or the government should
17 be required to turn these items or copies of these items
18 over. All of the opinions speak to not just the rules of
19 discovery and due process, but what they also speak to is the
20 criminal defendant's rights to counsel under the 6th
21 Amendment of the United States Constitution.

22 Essentially, what the courts are saying is that the
23 constitution doesn't just guarantee you the right to a
24 lawyer. It guarantees you the effective assistance of
25 counsel. That includes the pretrial gathering of

1 information.

2 In a number of cases which I pointed out and a couple
3 of more that I found since then, various courts throughout
4 the United States and the federal appellate circuit have held
5 similarly that a defendant is entitled to copies of materials
6 seized from him for examination, testing and reproduction.

7 The two cases that I cite immediately, one from
8 California, Westerfield v. Superior Court of San Diego County
9 and Cervantes v. Cates, which is a 2004-case out of Arizona,
10 had the very same holding. In fact, what the court said in
11 the Cervantes' case is, Arizona pornography laws were not
12 aiming at defense counsel in preparing for trial.

13 When I got response memorandum from the State a little
14 earlier today and I took some additional time over the lunch
15 hour to look at some of the citations that they've set forth
16 in their memorandum, Mr. Hillman correctly points out that
17 there is no case in Washington on point on this particular
18 issue.

19 What I will also point out is this is also a fairly new
20 phenomenon. I've been doing cases of this nature in the last
21 14 years. It's only the last two years that the state has
22 raised the specter that in cases of child rape, child
23 molestation, child pornography and the like, they're going to
24 take the position, once they get it in their possession,
25 they're not going to give it to anybody else. They're not

1 producing it or making any copies.

2 The two reasons are, it's contraband number one, and
3 number two, it could cause harm to the children who are
4 depicted within those photographs. Now, interestingly, those
5 arguments are consistently made by State and local
6 prosecutors, also federal prosecutors, in all of the cases
7 that have come under review. For instance, in United States
8 v. Hill, which is a 2004-case before the United States
9 District Court in the Central District of California, the
10 same argument was made by the government. What the court
11 said there is, "Moreover, not only does defense expert need
12 to view the images, his lawyer also needs repeated access to
13 the evidence in preparing for trial. There is no indication
14 that the defendant's counsel or expert cannot be trusted with
15 the material. Defense counsel is a respected member of the
16 Bar of this court and that of the Ninth Circuit. The court
17 has every indication that he can be trusted with the
18 materials."

19 In the case in Nevada, which is the State of Nevada,
20 Gammick, Richard Gammick, who is the district attorney,
21 against the Second Judicial District of Nevada, where the
22 prosecution took up on appeal the trial court's granting of a
23 motion to compel, in other words to make copies of those
24 depictions to turn over to the defense. The court of appeals
25 Nevada said this: "We conclude that California's and

1 Arizona's decisions are analogous to the instant case. In
2 both the Cervantes and instant case, the police seized child
3 pornography videotapes. In this case, the State has allowed
4 defense counsel to view the videotape at its office. The
5 State has refused to produce a copy for the defense counsel
6 to review privately with experts."

7 The court goes on, "Because nothing in NRS 174.235 or
8 200.710 to 200.735 precludes child pornography from being
9 copied for the purpose of defending criminal charges, we hold
10 the district court did not abuse its discretion in ordering
11 the State to provide the Epperson defendants with a copy of
12 the videotape to adequately prepare their defense."

13 "Additionally, as the California court noted, denying
14 defense counsel copies of the child pornography hinders the
15 defendant's right to effective assistance of counsel. The
16 Epperson defendants' constitutional rights trump any
17 prohibition within the Nevada Statutes," including the
18 copying and reproduction of child pornography, and therefore
19 they followed those decisions in allowing defense counsel to
20 have copies of them.

21 This is what it comes down to. Mr. Hillman and members
22 of his office can go down to the property room at their
23 leisure and not just view them, but make copies of them, take
24 them back to their office and keep copies in their office in
25 preparation of trial. Mr. Hillman and anybody else on his

1 staff that he so chooses can decide which of these he'll use
2 for opening statement, which of these they'll use as exhibits
3 for trial, which of these they will use and how they will use
4 them when they're arguing their summation to the jury. They
5 can do that at their leisure. What they're saying to the
6 defense is, "You not only get to not do that like we get to
7 do that, but you don't get to show that to the defendant."

8 A defense attorney cannot, simply cannot, defend a case
9 of this nature without sitting down with the defendant and
10 being able to establish with him under what circumstances or
11 whether any of the images pertain to him whatsoever. It's
12 rather simplistic. I can tell you I can't imagine defending
13 a case by showing me a picture and in a vacuum deciding, one,
14 how that would be used by the State and, two, how to defend
15 against that, without the ability to show it to the defendant
16 and have a discussion with him. It's his case. He's
17 accused. He has the right to see this. That's the purpose
18 of reproducing it, not only allowing the defense to properly
19 prepare for trial.

20 The State's remedy here is a protective order. In all
21 of the cases the court has held there must be a protective
22 order in place. In fact, in one of the cases I found, they
23 actually spelled out what the limitations are for this
24 protective order. That was in the Gammick v. Second Judicial
25 District in Nevada. It goes through a number of different

1 things. The defendant cannot possess a copy of the
2 videotape. He may view it in preparing the defense. Counsel
3 cannot make additional copies of the videotape and on and on
4 and on. What is interesting, too, it appears in the prior
5 case, the State has taken those exact same requirements and
6 used a protective order when making the objections and then
7 being overruled by the trial court. The defense here is
8 asking the State to make copies. We'll willingly sign a
9 protective order. I have no interest in disseminating it to
10 anyone else.

11 I do wish to prepare for this case on repeated numbers
12 of crimes. I also want to have confidential conversations
13 with the defendant in anticipation of trial and in seeing
14 those tapes and those photographs. I believe that not only
15 due process requires this, but also the defendant's right to
16 effective assistance of counsel. Thank you.

17 THE COURT: You haven't made any argument with
18 regard to the necessity of having an expert review them.

19 MR. SCHWARTZ: At this time because we've not
20 retained an expert.

21 THE COURT: You have not made an effort to go review
22 what's there?

23 MR. SCHWARTZ: No.

24 THE COURT: You haven't gone to the property room
25 and seen it?

1 MR. SCHWARTZ: I have not seen it.

2 MS. HIGH: Thank you. Mary Kay High for Ms. Wear.
3 We've joined in the motion and fully support the arguments
4 presented by Mr. Schwartz. I would like to emphasize two
5 items. Again, defense counsel cannot prepare a case for
6 defending an individual without that individual's assistance.
7 They need to be able to aid and assist. That really goes to
8 the heart of any kind of defense and any kind of effective
9 representation.

10 Also, several minor points that were raised in
11 Mr. Hillman's response brief, one was the concern about
12 duplication and the harmful effects on children. Clearly,
13 that is not in the context of defense counsel trial
14 preparation: Clearly, those prohibitions and those concerns
15 relate to the duplication, reproduction and passing on to
16 individuals for, say, a barred interest, rather than someone
17 preparing for trial.

18 Finally, the notion somehow that preparing a case for
19 trial with the defendant is for some immoral or improper
20 purpose is simply not the case in defending one of those
21 matters. It is not the touchstone or background in trying to
22 review the materials and trying to prepare for trial, but
23 rather it's to have a constitutionally mandated effective
24 assistance of counsel. Thank you.

25 THE COURT: I'm going to ask you a question before

1 you get started. Are any of the materials that are being
2 sought or in the possession of the State computerized images?

3 MR. HILLMAN: No.

4 THE COURT: All right. Go ahead.

5 MR. HILLMAN: First off, in response to what
6 Ms. High just said, one thing I would disagree with is there
7 would be no harm to the children by the defense. I would
8 agree with that normally, but not in this case, that part of
9 the reason they want the evidence is so they can sit down
10 with their clients and watch it, the very clients who not
11 only raped and molested the children but created the actual
12 visual matter we're talking about.

13 Just as a background to this, I understand there's a
14 presumption of innocence. I understand the State hasn't
15 proven anything yet. We can decide this motion in a
16 separate, in a fantasy land of facts where the defendants
17 have no clue what the evidence is against them or acknowledge
18 the fact that these defendants are on videotape, both of
19 them, raping and molesting children, and they're the ones
20 that created this very evidence. They know better than
21 anyone else what the evidence is.

22 Mr. Schwartz made mention of the letter that I wrote to
23 them, to him, about the request being unduly burdensome.
24 That was only in response to the request that "I have
25 everything that you have." There is a lot of evidence that

1 was seized from Mr. Giles' home, much, if not most of it, is
2 not criminal in nature. It's not relevant to the charges.
3 That's why I wrote that. I think what we're talking about
4 here is set forth in the State's memorandum. I counted 21
5 videotapes that depict these two defendants, either
6 individually or together, committing alleged crimes involving
7 sex acts against children. So we're talking about 21
8 videotapes, and then there's a lot of -- I think there's 9
9 other videotapes and numerous photographs and magazines of
10 just what I would call "commercial child pornography" or
11 "child pornography involving unidentified children."

12 The defendants do have a Sixth Amendment right to
13 effective assistance of counsel. Certainly their counsel are
14 entitled --

15 THE COURT: I'm going to interrupt you again. There
16 are videotapes of the victim. Is there only one victim
17 charged in this case?

18 MR. HILLMAN: There's a total of three between the
19 two defendants.

20 THE COURT: Three charged, so 21 videotapes
21 involving the three alleged victims. The photographs, are
22 there still photographs involving the three victims or are
23 the still photographs the commercial child pornography?

24 MR. HILLMAN: I don't believe there are still
25 photographs involving the three named victims.

1 THE COURT: All right.

2 MR. HILLMAN: There was a lot of property seized.
3 That's not my recollection. That's all videotaped matter.

4 THE COURT: Thank you.

5 MR. HILLMAN: They have the right to effective
6 assistance of counsel. They have the right to review the
7 State's evidence and be prepared to respond to it. What I
8 haven't heard here is why they can't view videotapes of their
9 clients having sex with these children in the property room
10 or at the Tacoma Police Department or wherever it is they
11 would like to view that. I've talked to the Tacoma Police
12 Department. They're willing, if necessary, to check the
13 defendants out of the jail and bring them down to the
14 property room or to a viewing room at the Tacoma Police
15 Department, so counsel can sit with them and review the
16 matter.

17 I understand that's not ideal for them. They would
18 prefer just to be able to have unfettered access to it. I
19 think the simple fact that I may be able to go down and look
20 at that evidence, if I so choose, which I don't know that I
21 will, more often than they can, doesn't necessarily mean they
22 can't effectively represent their client or they're at a
23 disadvantage.

24 As I said before, their clients know exactly what's on
25 the videotapes. They can go down. The attorneys can view

1 the matter as many times as they want. They can have their
2 clients brought down to review it with them.

3 THE COURT: I'm going to interrupt. How would you
4 expect to review the videotapes with your clients if they're
5 in custody?

6 MR. SCHWARTZ: The same way we do with crime scene
7 videos. I have a small television set that has a videotape
8 player built into it. It's one single plug. I call the jail
9 ahead of time. I say, "I'm bringing this down here, bringing
10 copies of this." I come down to the jail.

11 THE COURT: So you would be bringing these tapes
12 into the jail?

13 MR. SCHWARTZ: Yes.

14 THE COURT: All right. Continue.

15 MR. HILLMAN: That's another concern I have. With
16 respect to the case law cited by defense counsel, again,
17 there is no case law in Washington. It would be nice if
18 there were. I'm sure that that will occur soon, but counsel
19 cites, you know, cases from other jurisdictions.

20 He cites the Westerfield case from the state of
21 California. It says what it says. We're not in California.
22 That's not binding on Your Honor. There's different rules in
23 Washington than there are in California. I would note the
24 factual dissimilarities. In Westerfield, you're talking
25 about mostly digital images, computer images, which are a lot

1 different or a lot easier to manipulate.

2 The defendant has an interest in that case to establish
3 or investigate if they were manipulated somehow or how they
4 got on the defendant's computers. There were also thousands
5 of images as set forth in the Pawlyk case. Here we're
6 talking about 21 videotapes and magazines and photographs
7 that counsel can go and look at in the property room.

8 The Cervantes case from Arizona and all of the federal
9 cases that counsel cited involve discovery rules that
10 specifically use the language, the prosecutor's obligations
11 or government's obligations are to copy or duplicate.
12 Understandably, the court in that case says, "The rule says
13 what it says. You are to copy or duplicate."

14 When our Supreme Court adopted this court's rule, they
15 were certainly familiar with the words. The federal words
16 have always been used as a model for the court rules. They
17 did not adopt that statement. They said, "The State is
18 ordered to disclose." I would ask the court to read that
19 more narrowly. They have disclosed.

20 We've told them what it is, where it is. As set forth
21 in the brief, the police did a very detailed narrative
22 saying, describing, what's in each and every videotape.
23 Certainly, they're not required to take the police's word for
24 what's in there. They can, as I said, go down, view the
25 videotapes as many times as they want and compare it to the

1 narrative.

2 To say they have no idea what's on the tapes, they made
3 the tapes. The contents of the tapes are described in
4 discovery. They can go down and watch the tapes themselves
5 or in the presence of their clients. We're willing to
6 facilitate and assist in that, if it's necessary.

7 THE COURT: Do you know how many hours of videotape
8 there is on the 21 videotapes?

9 MR. HILLMAN: I don't. I meant to ask the detective
10 who compiled that report, but at least 21 videotapes. Just
11 from the narrative, I don't know how long they are.

12 THE COURT: I'm sorry. I interrupted you. Go
13 ahead.

14 MR. HILLMAN: The State is asking the court to deny
15 the motion. I think we have disclosed the evidence to them.
16 That evidence is accessible to either counsel to come and
17 view at their convenience, at least at business hours. I
18 don't know what the difference is for them in meeting with
19 their clients, whether they do that in the jail or in the
20 basement of the building, in the viewing room. I know
21 there's a difference as far as the attorney's themselves
22 having reviewed it. I don't think they're going to be denied
23 their assistance of counsel by simply not having copies of
24 this.

25 Again, you know, this is stuff that's illegal to

1 possess in the state of Washington. There's an exception for
2 law enforcement, and the court and juries have to handle it
3 during trial. This is not something that the court should be
4 turning over to the defense. We don't give them cocaine or
5 heroin or things like that. If there becomes a need for an
6 expert to examine this evidence, we're accustomed to doing
7 that. When there's DNA, biological, drugs, things like that,
8 we transport to the office of the expert. Protective orders
9 were issued. We don't have an objection to that, if there's
10 a need and an expert identified.

11 THE COURT: Brief rebuttal.

12 MR. SCHWARTZ: Thank you, Your Honor. Addressing
13 directly counsel's claim that we haven't established a need
14 here, that's actually not the defendant's requirement. In
15 U.S. v. Cadet which is from the Eastern District of New York,
16 the court said to adopt the government's position that the
17 defendant has made no showing of need and thus is not
18 entitled to a copy of the files turns the mandatory discovery
19 obligation of Rule 16 on its head. It is the government's
20 obligation.

21 THE COURT: New York has a rule that the
22 government's obligation is to duplicate evidence, correct?

23 MR. SCHWARTZ: They're following a federal rule
24 which says "copying." The government took the same position
25 here that the State is taking. What they said, what the

1 government said, in Cadet and all of the state and federal
2 cases is twofold. One, this is contraband, therefore we're
3 precluded from copying it. Two, is that this by making
4 copies of it and disseminating to defense counsel, that that
5 causes harm to the children because of further reproduction
6 and dissemination of it. The Cadet court answered both of
7 those questions squarely. They didn't focus on what the
8 plain wording of the rule was. What they basically said was
9 that it's -- it is the government's obligation to establish
10 why the rule should not be followed. To that end, they said
11 that, you know, their suggestion that this would somehow harm
12 children by reproducing the files in the Cadet case contains
13 the subliminal implication that a defense attorney is less
14 sensitive to the harm of children continued circulation may
15 cause and is therefore less responsible to present it than an
16 attorney for the government. The court didn't buy off on
17 that argument.

18 Further in Cadet, the same argument was made as, "Hey,
19 you can come back, look at it in our office." The Cadet
20 court says that's no good. Any defense attorney knows and
21 any attorney knows that the defense should have the same
22 ability to access it as the government does; otherwise it
23 puts them at an unfair disadvantage.

24 They're saying, "We'll let you go to the property room
25 and bring your client down there." Here's the major problem

1 with that. They don't leave you alone in the property room.
2 I've been to the property room, I would hazard a guess,
3 hundreds of times. They don't let defense attorneys alone in
4 there. Someone stands there and watches what you do.
5 They're not leaving him alone. I can tell you that. The
6 detectives will be standing right there. How am I supposed
7 to have a confidential conversation with him about the
8 charges the State is posing against him?

9 That doesn't solve the problem. The disclosure here is
10 not the narrow meaning that the State would have the court
11 believe. If it was, then the State would never have to do
12 this, which is what they do in every case to comply with
13 discovery obligations. That is, they have to turn over
14 copies of every document that they have, even though the rule
15 says "disclose." Otherwise, we would be at the old stage
16 where the prosecutor would invite you upstairs to the office
17 and say, "Take a look at my file. When you're done in
18 20 minutes, let's talk a deal." No one believes that's how
19 you work a criminal case. No one believes that. That's why
20 in this case as well as any numbers of cases involving these
21 types of charges, we believe it is critical for the State to
22 make copies. The remedy here is their protective order, the
23 nondisclosure in the form of reproduction.

24 MS. HIGH: Thank you. I would also like to
25 emphasize that the right means to have the ability. To

1 conduct a defense means that you get to develop trial
2 strategy, that sessions with your investigators and with your
3 client are work product. They're privilege. That cannot be
4 accomplished if we're forced to view the items in a property
5 room.

6 As Mr. Schwartz, his experience has shown, it's the
7 same as mine. We're not left alone in the property room with
8 property in a criminal case. They're worried about
9 destruction, a lot of legitimate concerns. The long and the
10 short of it is we will have a detective in there while we're
11 trying to review the materials, perhaps brainstorm or
12 strategies to the effect that we're revealing either work
13 product, or we're unable to develop the kind of trial
14 strategy we would like to develop.

15 We would ask we be provided copies. Again, I think
16 this court knows that, as well as Mr. Hillman, that as
17 officers of the court Mr. Schwartz and I are bound by certain
18 obligations. Clearly, an order restricting dissemination and
19 aspects of use, how it's kept secured in our office are all
20 things that we would readily sign in order to facilitate our
21 defense.

22 MR. HILLMAN: Can I add one thing that's not an
23 argument? I spoke to the lead detective in the case, Brad
24 Graham. I asked him, "Is there a place in the Tacoma Police
25 Department they can view the tapes where there's a window or

1 something like that, where they can be in there by themselves
2 and the detective can look in to make sure the defendant is
3 not going to rip up the videotape or anything, but without
4 having to listen?" He says they do have rooms like that with
5 blinds. That's something they would be willing to do, if
6 that was a concern for the court. I would also add, you
7 know, that they can view the evidence with the clients and
8 then afterwards talk to them in private about what it was
9 that they looked at.

10 THE COURT: Well, it's difficult for me to make as
11 informed a decision as I would like because I just have a
12 description of what's on the videotapes. I don't believe any
13 of the attorneys have viewed them. Is that correct? Nobody
14 in front of me has viewed the videotapes?

15 MR. HILLMAN: No. As I indicated on the memorandum,
16 I have a copy of the lengthy narrative that the police did.
17 If Your Honor wanted to review it in camera, that's available
18 to you.

19 THE COURT: Do you have those narratives?

20 MR. SCHWARTZ: Yes.

21 MS. HIGH: We have received that discovery, their
22 interpretation or narratives.

23 THE COURT: I'm extremely sensitive to the
24 duplication of this type of material. I feel every time it's
25 duplicated, the chances for dissemination for persons other

1 than its intended multiplies. I'm going to grant the
2 defendant's motion for this material upon the strictest of
3 protective orders. I'm not going to allow anyone to view the
4 tapes, other than the attorneys involved and their clients.
5 If you need anybody else to view them, you need to come back
6 and get that order done.

7 I don't believe that carrying 21 of these tapes into
8 the jail is going to be feasible or recommended. I don't
9 know how long the tapes are. I don't know they can be
10 transcribed onto fewer than 21 tapes or not. I have concern
11 about the bulk of tapes and having them brought into the
12 jail.

13 Each attorney is going to be held personally
14 accountable for the caring of those tapes wherever they go.
15 They need to be kept under lock and key at all times, again,
16 not viewed by anyone other than themselves and the defendant.

17 The right to have effective assistance of counsel
18 doesn't just pertain to trial preparation, but oftentimes,
19 more often than not, pertains to honest discussions between
20 the attorneys and their clients about what the evidence is
21 and being able to decide whether or not they're even going to
22 proceed to trial. Those discussions, it seems to me, are
23 most effectively carried on between the attorney and their
24 client with the evidence right there in front of them.

25 We do have boiler plate protective orders. They should

1 be modified to meet my concerns. I don't even know we can
2 get one entered today. Again, I don't know how many minutes
3 we are talking about. It says 21 tapes. I don't know if
4 we're talking 48 hours or 27 minutes. I have no idea how
5 many hours are on the tape. I'm assuming that the defense
6 attorneys may be in a better position to answer that question
7 than we are.

8 MS. HIGH: Well, I reviewed the discovery, but I
9 don't -- you know, it's a two or three sentence, oftentimes,
10 narrative. I don't know how long. Some of them do say 9
11 minutes or 20 minutes, those kind of things. I didn't tally
12 them out. It seems to me they could be put onto a CD.

13 THE COURT: I don't want them put on anything
14 computerized. That's my biggest concern is to have them
15 digitized. Dissemination of that type of material I'm even
16 more protective of. I'm going to specifically prohibit that.

17 MR. HILLMAN: Your Honor, the remedy that was sought
18 by the defendants were items of evidence the State intends to
19 use at the defendant's trial. When the search warrant was
20 executed, they seized a lot of stuff that now that the police
21 have had an opportunity to review it, are not criminal in
22 nature and would not have to do with the trial.

23 I want to make sure the State's order is the State
24 turns over evidence the State intends to use at the trial,
25 which includes any evidence related to the crimes, 404(b)

1 evidence, evidence that can be used for impeachment, all of
2 those types of things.

3 Once the defense receives what we gave to them, if
4 there's something additional that they feel they want the
5 State hasn't given them, come back before the court, and the
6 State can address that.

7 MR. SCHWARTZ: My plan was, if the court was to
8 order it, I expected the court wasn't going to tell them turn
9 over everything. That's why I couched it in terms of what
10 they're intending for trial.

11 THE COURT: We're talking about, basically, the 21
12 videotapes; is that correct?

13 MR. HILLMAN: There's numerous adult pornographic
14 movies, movies that have nothing to do with these crimes.
15 I'm assuming I'm not ordered to turn those over.

16 THE COURT: That's correct.

17 MR. SCHWARTZ: And that's not what I sought.

18 MR. HILLMAN: Second, the defendants will provide
19 blank tapes, things like that.

20 MR. SCHWARTZ: Yes.

21 MS. HIGH: Sure.

22 THE COURT: Are you seeking duplication of the nine
23 tapes that don't involve these victims?

24 MR. HILLMAN: Your Honor, if I intend to use those
25 at trial -- there's a count of possession of child

1 pornography. If we're going to use those at trial, we'll
2 turn those over as well, pursuant to the court's order.

3 MR. SCHWARTZ: My understanding is those were
4 commercial. That's the way I read it. They were some kind
5 of commercial grade.

6 MR. HILLMAN: They are. There are two in
7 particular, that are particularly, probably, the most
8 disturbing pieces of evidence that were discovered that were
9 from a prior criminal case from the defendant, that was
10 prosecuted sometime ago for child abuse, evidence that was
11 taken. That's one of the tapes. It is child pornography.
12 If we're going to use that, we'll turn that over, too.

13 THE COURT: I just have concern every time these
14 things are duplicated. You will be held personally
15 responsible for these or incur my wrath.

16 MR. HILLMAN: I believe we'll be able to agree on a
17 protective order. I don't have that drafted yet. With the
18 court's permission, I'll confer with counsel. I believe we
19 can present the court with an agreed protective order.

20 MR. SCHWARTZ: Yes. Mr. Hillman and I discussed
21 that today.

22 THE COURT: Did you want me to sign this order with
23 regard to Ms. Wear --

24 MS. HIGH: Yes, Your Honor.

25 THE COURT: -- having the evaluation?

APPENDIX "J"

Verbatim Transcript of Proceedings

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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.)
LEE WILLIAM GILES,)
Defendant.)

No. 06-1-03604-4

COPY

VERBATIM REPORT OF PROCEEDINGS
SEPTEMBER 28, 2006
COVER SHEET

APPEARANCES

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For the Plaintiff:

JOHN HILLMAN
Deputy Prosecuting Attorney

For the Defendant:

MICHAEL E. SCHWARTZ
Attorney at Law

1 SEPTEMBER 28, 2006

2 * * * * *

3
4 (The beginning portion of the
5 proceedings held outside of Mr. Giles' presence
6 was not requested and not transcribed.)

7
8 JUDGE WORSWICK: The standard has been met.
9 Are you ready to proceed?

10 MR. SCHWARTZ: We're ready to proceed.

11 MR. HILLMAN: Your Honor, Mr. Giles now is
12 present in the courtroom. This is the State's motion to
13 reconsider your Honor's ruling from last week granting
14 the motion to compel the State to duplicate and produce
15 items of child pornography that it intends to use at
16 trial and turn those over to the defense.

17 When your Honor heard that argument Defense
18 Counsel cited numerous federal cases in his Brief and
19 additional cases, I believe, orally on the record, and
20 at that time the State was not aware that essentially
21 all those cases have been overruled by a recent federal
22 statute that took effect in July. It's been cited in
23 the State's Brief, and federal law now states that
24 regardless of the provisions of the federal Criminal
25 Rule of Procedure 16 Defense Counsel does not get any

1 child pornography if Defendant requests to duplicate or
2 provide it to them. We're not here to say that federal
3 statute applies in Washington, but I don't know how much
4 weight your Honor gave to the federal cases, the federal
5 authority that was cited by Defense Counsel, and if that
6 played a part in your Honor's ruling we'd ask you to
7 reconsider that.

8 Washington defendants have no greater right
9 to the effective assistance of counsel than do similarly
10 situated federal defendants accused of the same crime.
11 In federal court now, as long as the State makes the
12 evidence reasonably available to the defense to inspect
13 it at a government facility, as we have, that is
14 effective assistance of counsel, and the federal system
15 recognizes that. And unless there's something that
16 requires the Court to do that in our case, it should be
17 the same.

18 And as I said last time, there are statutes
19 and rules from other states and other jurisdictions that
20 say "copy and duplicate." In our state it just simply
21 says "disclose." And it's, again, our position that by
22 advising the defense of the evidence we have by
23 outlining it in detail in the discovery that they have
24 and making it reasonably available to them to inspect in
25 the property room they can effectively represent their

1 clients. Obviously, Ms. Wear is not here, but
2 Mr. Schwartz can certainly effectively represent his
3 client by viewing the evidence and then discussing it
4 with his client. And as we've proposed before, if
5 necessary, if he feels it's necessary for his client to
6 view it with him, that can be arranged.

7 In both of the Briefs that Counsel has filed
8 and on the record I still haven't heard any compelling
9 reason why he needs to have this evidence at his office
10 to review repeatedly in order to effectively represent
11 his client when he can do that by looking at it in the
12 Pierce County property room and, if necessary, bringing
13 the defendant down to view it.

14 We cited in our Brief that there was very
15 disturbing evidence. And that doesn't mean that Defense
16 Counsel doesn't need to look at it, we recognize that
17 fact. But the only reason that we cite that concern is
18 the Court had acknowledged last time that there is a
19 compelling interest in protecting the children from
20 further harm by duplicating this evidence or having it
21 viewed repeatedly over and over. That's the only reason
22 why I cite the disturbing nature of this evidence is
23 because if that's the evidence that's at issue, and it
24 is, there's even more of an interest for the Court to
25 place restrictions on this and in essence use the most

1 restrictive discovery order that the Court can impose
2 that still allows the defendant to have the effective
3 representation of counsel. And it's our position that
4 Defense Counsel, again, can effectively represent his
5 client by viewing the evidence at a government facility
6 and discussing it with his client afterwards, or we can
7 arrange to have the defendant brought down there to view
8 it with him.

9 Additionally, the only thing that's new
10 other than the federal statute that I cited to you is I
11 don't know that -- and this would have been my fault --
12 you were given an accurate recitation of just exactly
13 what evidence we are talking about. Obviously there are
14 all the videos tapes that the defendant and his
15 co-defendant made of the both of them having sex with
16 children, but there's also evidence that the State will
17 offer in support of the one count of child pornography
18 that is evidence of a past case that occurred back in
19 1991, and it's several video tapes of the defendant in
20 that case having sex with a minor girl over and over for
21 years and years. There was evidence that was ceased by
22 the Pierce County Sheriff's Department that was at the
23 Pierce County Sheriff's Department with incident numbers
24 on it and it was found in the Defendant's possession in
25 his home when the warrant was served in this case on

1 August 2nd, 2006. Additionally, there are photographs
2 that are again evidence of the count of possession of
3 child pornography.

4 JUDGE WORSWICK: I don't think the Order
5 addressed the photographs.

6 MR. SCHWARTZ: It was presumed in addition
7 to the tapes the State was to turn over copies of the
8 photographs.

9 JUDGE WORSWICK: Where is the Order?

10 MR. HILLMAN: We haven't entered a formal
11 Order yet.

12 MR. SCHWARTZ: The Court wanted us to draft
13 the Protective Order and present the Protective Order at
14 the time of this Court's --

15 MR. HILLMAN: We can do all that today. It
16 was the State's understanding that we would have to turn
17 over any visual matter, whether it be video tapes or
18 photographs, that we intend to use at trial. And we do
19 intend to use the videotape from this past criminal
20 prosecution, criminal investigation.

21 And to go back to where I was talking about
22 earlier, there were also photographs of a minor child
23 undergoing a sexual assault examination at the hospital
24 that were again part of a prior investigation and
25 prosecution and they were found to be in the possession

1 of the defendant. And I tell the Court this because in
2 making your ruling you should consider the fact that
3 this is somebody who simply can't be -- not referring to
4 Mr. Schwartz, I'm referring to the defendant -- can't be
5 trusted to have access to this type of evidence. He was
6 a police officer and stole evidence of child rape so
7 that he could watch it in his own home.

8 JUDGE WORSWICK: Well, you're not suggesting
9 that Mr. Giles is going to have this evidence.

10 MR. HILLMAN: No. But why should he be
11 allowed to view it again? It's just completely
12 unnecessary. I understand why Mr. Schwartz needs to
13 look at it.

14 And again, Mr. Schwartz has said the State
15 hasn't proved anything yet and we haven't, and I
16 acknowledge that. But you can make your ruling based
17 upon the actual facts or, you know, make believe that
18 the defendant has no idea of what this evidence is,
19 which the majority of it is evidence that he's created.
20 That's the reality of what we have here. The necessity
21 for Mr. Schwartz to look at it with his client, that's
22 something he can do, but he can do that in the property
23 room.

24 JUDGE WORSWICK: Mr. Schwartz?

25 MR. SCHWARTZ: Thank you, your Honor.

1 Your Honor, we're asking the Court deny the
2 State's motion for reconsideration. First of all, I
3 think Counsel concedes and we pointed out in a Brief
4 that the federal statute at issue here, the Adam Walsh
5 Child Safety Act, is not applicable before this Court.
6 I would also hasten to add that you're talking about two
7 radically different systems. In fact, even from a legal
8 standpoint under the federal system congress has the
9 authority. They're co-equal branches in the U.S.
10 Supreme Court in setting procedural matters that govern
11 a host of different issues, including the admissibility
12 of evidence, discovery, things like that. In Washington
13 that's not the case. In fact, under Washington's
14 Constitution it's only the supreme court that has that
15 authority and the legislature is precluded from doing
16 anything of that nature.

17 In the case of State versus Linden the Court
18 said that it is long settled policy in the state to
19 construe the rulings of criminal discovery liberally in
20 order to serve the purposes of underlying Criminal
21 Rule 4.7 which are to "provide adequate information for
22 informed pleas, expedite trial, minimize surprise,
23 afford opportunity for effective cross examination, and
24 to meet the requirement of due process." That quote was
25 later taken in State versus Yates. But what's

1 important, I think, for the Court to remember here is
2 what they're talking about there. It's not just that
3 the defense attorney is able to look at it and say, "Oh,
4 I know what Exhibit No. 2 or Exhibit No. 3 is," or all
5 those kinds of things. The attorney for the defense is
6 using it the same way the State is. It's because you
7 have to be able to understand how those photographs or
8 video tapes are going to be used within the
9 presentation, not only in the State's case and how to
10 effectively rebut that, but also in the presence of the
11 defense case.

12 What the Courts were saying is you have to
13 have balance. You can't give one advantage over the
14 other. It just seems to be glaringly obvious here that
15 the State can't have the opportunity to make copies for
16 themselves and Mr. Hillman can look at this whenever he
17 wants, but I am so restricted that I can only do it
18 within the presence of a sheriff or a property room
19 employee and under certain hours.

20 The second thing is that I think what
21 Counsel fails to realize here is that, you know, over
22 90 percent of cases that are filed within the Pierce
23 County Superior Court result in a plea. And they result
24 in a plea for a number of different reasons, but one of
25 the reasons is the defense attorney is able to spend

1 time with his client to show him what the evidence is
2 and say, "Look, this is what they're going to put up on
3 a monitor, what they're going to put up on a blow-up in
4 that fashion." And oftentimes you have clients who are,
5 for whatever reason, in some kind of denial about what
6 their case is. And I'm not saying that that's the case
7 here, but from the standpoint of what the defense has to
8 do is you have to sort of run these paralegal roads. At
9 the same time that you're preparing for trial you also
10 have to be able to ably negotiate the case and also
11 ensure that your client is onboard for that. If the
12 client is being frozen out, the defendant is being
13 frozen out and doesn't have a complete picture of what's
14 going on and is also not able to have the free
15 communication about those things with the defense
16 attorney.

17 These things are not going to happen --
18 these pictures and these video tapes may be very, very
19 distasteful. I'm certain that they are. So are crime
20 scene photos from a double or triple homicide. So are
21 autopsy photos of a small child. All of those kinds of
22 things are. So are examinations from a particularly
23 gruesome medical examination of a particularly gruesome
24 rape. Mr. Hillman's had that experience; I've had that
25 experience; many lawyers have had that experience within

1 this county. I just put that aside. That's not the
2 point here. They may be particularly grewsome. That
3 may be the case. It doesn't change the fact that the
4 defense attorney has an obligation under the
5 constitution to be able to defend his client, and it
6 cannot be done by reading the words disclosed in such a
7 narrow fashion as the State wants the Court to do here.

8 I don't believe the State has brought
9 anything new for the Court's reconsideration that should
10 change this Court's mind. I think the Court's stated
11 reasons last time, that while it understands that there
12 is the interest of the child to protect and there is
13 also that these items shouldn't be disseminated, that
14 that's outweighed by the compelling interest of ensuring
15 the defendant gets a fair trial, that his attorney is
16 able to represent him, and that the defendant has all
17 the information before him so he can make that decision
18 ultimately of whether he is to proceed to trial. What
19 the State has brought to the Court at this point doesn't
20 change the basis of the Court's ruling and so I would
21 ask that the Court deny the State's motion.

22 MR. HILLMAN: Your Honor, just briefly. The
23 Supreme Court did make our discovery rule and they said
24 in there "disclose." They didn't say "copy and
25 duplicate." And as I've said before, there's no

1 authority before the Court that interprets that rule as
2 Counsel is asking the Court to do. "Disclose" doesn't
3 mean you actually have to copy and duplicate items such
4 as this that is in and of themselves contraband. The
5 issue isn't how disturbing is this evidence, it's can
6 Defense Counsel effectively represent his client by
7 viewing this in the property room as opposed to having
8 his own copies that he can view at his office or
9 wherever he intends to keep them.

10 Counsel says, "Part of the reason I need to
11 have it is so that I can show it to my client." We've
12 already said we're willing to do that but, again, I
13 understand this case hasn't been tried, we haven't
14 proven anything, but it simply is not going to be
15 disputed that the defendant created and is in the bulk
16 of this evidence that we're talking about. There are
17 28 tapes of evidence of himself and his co-defendant
18 having sex with this child. The defendant made it
19 himself. He can communicate with his client whenever he
20 wants. He can watch the evidence, discuss it with his
21 client or, as we've offered to do, we can arrange to
22 have him view it with his client if he needs to.

23 We'd ask the Court to reconsider and change
24 the ruling and Mr. Schwartz can view it in the property
25 room.

1 JUDGE WORSWICK: Well, I can appreciate the
2 fact that both sides or both attorneys in this case are
3 very motivated by what they think is the right thing to
4 do. I can appreciate that. This is a very difficult
5 decision.

6 I have not heard anything today, though,
7 that would make me change my previous decision. I think
8 looking at these cases as non digitized materials that
9 are duplicated for both attorneys, both attorneys are
10 going to keep these items under lock and key, and no one
11 is going to view it other than them and their client.
12 And they're going to be held responsible should anything
13 leak out. I'm going to trust these attorneys with that
14 very heavy burden that I'm going to place upon them.

15 I'm going to leave it at that. I think it's
16 necessary for them to adequately prepare.

17 MR. HILLMAN: This is a bit unusual
18 situation where co-defendant, her trial is in limbo
19 being evaluated, so I have some Orders that I'll go over
20 with Mr. Schwartz that just pertain to Mr. Giles, and
21 then Ms. High, when she is back in court, I think will
22 probably agree to the same Orders and we can present
23 those to the Court.

24 JUDGE WORSWICK: Thank you. I appreciate
25 that.

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MR. SCHWARTZ: Thank you, your Honor.

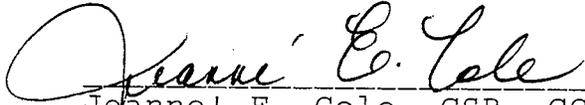
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REPORTER'S CERTIFICATE

I, Jeanne' E. Cole, Official Pro Tem Court Reporter for the Pierce County Superior Court, do hereby certify that the foregoing transcript entitled "Verbatim Report of Proceedings," was taken by me stenographically and reduced to the foregoing typewritten transcript at my direction and control, and that the same is true and correct as transcribed.

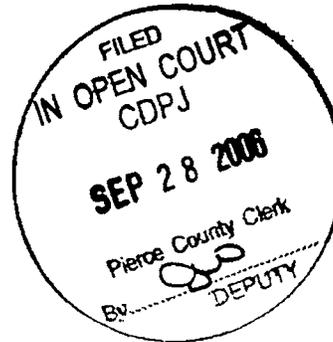
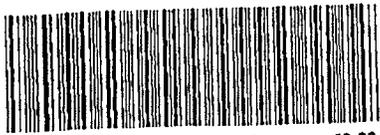
DATED at Auburn, Washington, this 4th day of October, 2006.



Jeanne' E. Cole, CSR, CCR
WA CCR No. 02161
CA CSR No. 08970

APPENDIX "K"

Protective Order re: Child Pornography



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

PROTECTIVE ORDER RE: CHILD
PORNOGRAPHY

Defendant.

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and produce visual depictions of children engaged in sexually explicit conduct, and the Court having granted the defendants' motion, it is hereby ORDERED, ADJUDGED, and DECREED,

That the State shall duplicate and provide to defense counsel copies of videotapes, photographs, and magazines depicting children engaged in sexually explicit conduct ("the evidence") that the State intends to offer at trial. The court's order is subject to the following conditions:

1. The evidence shall not be used for any purpose other than to prepare for the defense of the named defendant in the above-entitled cause.
2. The evidence shall not be given, loaned, sold, or shown or in any other way provided to anyone other than the defendant and his counsel.
3. The evidence shall not be exhibited, shown, displayed, or used in any fashion except in connection with judicial proceedings in the above-entitled cause.
4. The evidence shall not be duplicated without a court order.

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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3 5. The defendants shall not, under any circumstances, be permitted to retain or
4 possess the depictions and are only permitted to view the depictions in the presence of defense
5 counsel. The defendants shall not be permitted to view the depictions alone.

6 6. The ^{evidence} depictions shall be maintained by defense counsel in a secure location,
7 inaccessible to anyone other than defense counsel.

8 7. Before the evidence may be viewed by an expert witness, the defense shall ~~serve~~
9 the expert with a copy of this Order. Proof of service of this Order shall be retained in defense
10 counsel's file until such a time as the evidence is returned to the Pierce County Prosecuting
11 Attorney's Office. Obtain a court order. (u)

12 8. When a final disposition in the above-entitled cause has been reached in the trial
13 court, other than the evidence retained by the investigating law enforcement agency or the court,
14 any and all additional copies shall be returned to the Pierce County Prosecuting Attorney's
15 Office or the Tacoma Police Department within 30 days following final disposition in the trial
16 court, unless otherwise agreed to by the parties and approved by the court. The Pierce County
17 Prosecuting Attorney's Office or the investigating law enforcement agency will maintain one
18 copy of the evidence for the pendency of the case, including appeals.

19 9. The defense may petition the court for additional access to the evidence at a later
20 date upon a showing that the access is necessary for a legitimate purpose in connection with the
21 above-entitled cause.

22 10. A copy of this Order shall be kept with the evidence at all times.

23 11. The evidence shall not be reproduced in digital format under any circumstances.

24 12. Defense counsel shall provide the State with blank VHS videocassettes for each
25 VHS tape to be copied. The defense shall further pay the reasonable cost of duplicating the
26 evidence. The State may bill the defense for the cost of reproduction and any disputes may be
27 resolved by the court.
28

13. Any violation of this Order may be the subject of personal or professional sanction by the court presiding over the proceedings for which the discovery/records are sought or may subject counsel to other sanctions permitted by law.

DONE IN OPEN COURT this 28th day of September, 2006.

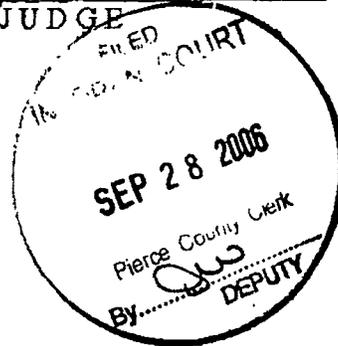
Lisa Wasson

JUDGE

Presented by:

John C. Hillman

JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB# 25071



Approved as to Form:

M. A. Schwartz

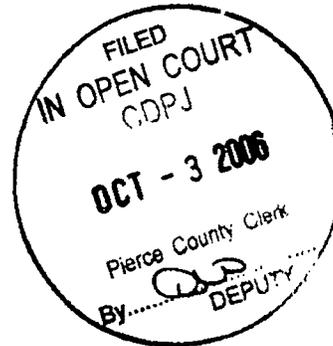
MICHAEL SCHWARTZ
Attorney for Defendant
WSB# 21024

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06-1-03616-8 28245451 PORD 10-03-08



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03616-8

vs.

MAUREEN ELIZABETH WEAR,

PROTECTIVE ORDER RE: CHILD
PORNOGRAPHY

Defendant.

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and produce visual depictions of children engaged in sexually explicit conduct, and the Court having granted the defendants' motion, it is hereby ORDERED, ADJUDGED, and DECREED,

That the State shall duplicate and provide to defense counsel copies of videotapes, photographs, and magazines depicting children engaged in sexually explicit conduct ("the evidence") that the State intends to offer at trial. The court's order is subject to the following conditions:

1. The evidence shall not be used for any purpose other than to prepare for the defense of the named defendant in the above-entitled cause.
2. The evidence shall not be given, loaned, sold, or shown or in any other way provided to anyone other than the defendant and his counsel.
3. The evidence shall not be exhibited, shown, displayed, or used in any fashion except in connection with judicial proceedings in the above-entitled cause.
4. The evidence shall not be duplicated without a court order.

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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3 5. The defendants shall not, under any circumstances, be permitted to retain or
4 possess the depictions and are only permitted to view the depictions in the presence of defense
5 counsel. The defendants shall not be permitted to view the depictions alone.

6 6. The ^{evidence/}depictions shall be maintained by defense counsel in a secure location,
7 inaccessible to anyone other than defense counsel.

8 7. Before the evidence may be viewed by an expert witness, the defense shall obtain
9 a court order.

10 8. When a final disposition in the above-entitled cause has been reached in the trial
11 court, other than the evidence retained by the investigating law enforcement agency or the court,
12 any and all additional copies shall be returned to the Pierce County Prosecuting Attorney's
13 Office or the Tacoma Police Department within 30 days following final disposition in the trial
14 court, unless otherwise agreed to by the parties and approved by the court. The Pierce County
15 Prosecuting Attorney's Office or the investigating law enforcement agency will maintain one
16 copy of the evidence for the pendency of the case, including appeals.

17 9. The defense may petition the court for additional access to the evidence at a later
18 date upon a showing that the access is necessary for a legitimate purpose in connection with the
19 above-entitled cause.

20 10. A copy of this Order shall be kept with the evidence at all times.

21 11. The evidence shall not be reproduced in digital format under any circumstances.

22 12. Defense counsel shall provide the State with blank VHS videocassettes for each
23 VHS tape to be copied. The defense shall further pay the reasonable cost of duplicating the
24 evidence. The State may bill the defense for the cost of reproduction and any disputes may be
25 resolved by the court.
26
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946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

13. Any violation of this Order may be the subject of personal or professional sanction by the court presiding over the proceedings for which the discovery/records are sought or may subject counsel to other sanctions permitted by law.

DONE IN OPEN COURT this 3RD day of October, 2006.

Wesley Wosawat
JUDGE

Presented by:

John C. Hillman
JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB# 25071



Approved for entry, notice of presentment waived:

Mary K. High
MARY K. HIGH
Attorney for Defendant
WSB# 20123

jch

APPENDIX “L”

*State’s Motion to Reconsider Ruling Granting Defense Motion
For Duplication of Child Pornography*



06-1-03604-4 2620967B MTRC 09-27-06

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 26 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY W DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NOS. 06-1-03604-4
06-1-03616-8

vs.

LEE WILLIAM GILES,
MAUREEN ELIZABETH WEAR,

STATE'S MOTION TO RECONSIDER
RULING GRANTING DEFENSE
MOTION FOR DUPLICATION OF
CHILD PORNOGRPAHY

Defendant.

I. IDENTITY OF MOVING PARTY:

Moving party is the plaintiff, State of Washington.

II. RELIEF REQUESTED:

The State respectfully requests that the court reconsider its ruling requiring the State to duplicate and distribute child pornography to defense counsel.

III. STATEMENT OF THE CASE:

On September 21, 2006, the court heard argument on the defendants' motion to compel the State to duplicate and distribute to the defense child pornography seized from defendant Giles' home. After reviewing the memoranda of the parties and hearing oral argument, the court granted the defendants' motion.

ORIGINAL

1 In the defendants' brief and orally at the hearing, defense counsel cited numerous federal
2 cases as persuasive authority for the court to grant the motion. The court was not informed that
3 all of the federal cases cited by the defense were overruled by recent federal legislation.

4 The court did not articulate what authority most persuaded the court to grant the
5 defendants' motion. If the federal cases played a part, the State is asking the court to reconsider
6 its ruling based on the new authority cited below.

7
8 **IV. LAW AND ARGUMENT:**

9 At the prior hearing, both parties referenced Federal Rule of Criminal Procedure 16,
10 which requires the government to "copy" or "duplicate" items of evidence it intends to use as
11 evidence and to provide the defense with the copies. This federal criminal rule was the basis for
12 many of the court holdings in the federal cases cited by defense counsel.

13 Those cases are all overruled. In July 2006, Congress and the President enacted the
14 Adam Walsh Child Protection and Safety Act of 2006. This new federal law, which became
15 effected in July of 2006, provides in part:

16
17 **(m) Prohibition on Reproduction of Child Pornography**

18 (1) In any criminal proceeding, and property or material that constitutes child
19 pornography (as defined by section 2256 of this title) *shall remain in the*
20 *care, custody, and control of the either the Government or the court.*

21 (2)(A) *Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a*
22 *court shall deny, in any criminal proceeding, any request by the defendant to*
23 *copy, photograph, duplicate, or otherwise reproduce any property or material*
24 *that constitutes child pornography (as defined by section 2256 of this title), so*
25 *long as the Government makes the property or material reasonably available to*
the defendant.

(B) For purposes of subparagraph (A), property or material shall be deemed to be
reasonably available to the defendant if the Government provides ample
opportunity for inspection, viewing, and examination at a Government facility of
the property or material by the defendant, his or her attorney, and any individual
the defendant may seek to qualify to furnish expert testimony at trial.

1 HR 4772, *Adam Walsh Child Protection and Safety Act of 2006*, Title V, Sec. 504
2 (2006)(emphasis added).

3 In the federal criminal justice system, criminal defendants and their counsel may not
4 receive any copies of child pornography regardless of whether the Government intends to use the
5 evidence at trial. The Government is only required to make the child pornography "reasonably
6 available" for inspection at a government facility, just as the State has offered to do in the present
7 case.
8

9 The court should reconsider its ruling and deny the motion to compel production of the
10 child pornography at issue in this case. The federal authorities cited by counsel are overruled
11 and the court should give them little weight.

12 The court should adopt the approach taken by Congress, especially under the facts of this
13 case.¹ Criminal defendants in the federal system have the same constitutional right to the
14 effective assistance of counsel as do defendants charged in Washington. In fact, in a rare case of
15 Washington courts holding that federal rights are broader than state constitutional rights,
16 Washington case law recognizes that the federal constitution grants a greater right to effective
17 assistance of counsel than does article 1, section 22 of the Washington Constitution. State v.
18 Sardinia, 42 Wn. App. 533, 540, 713 P.2d 1222 (1986). If federal criminal defendants charged
19 with sex crimes against children can receive constitutionally sufficient effective assistance of
20 counsel by viewing evidence of child pornography at a government facility, so can similarly-
21 situated Washington criminal defendants.
22

23 Nor should the court accept the defendants' argument that they must have copies of the
24 child pornography until they have actually exercised their right to inspect it. Counsel claim the
25

¹ See attached Declaration.

1 need to review the evidence repeatedly, yet have not even taken the opportunity to see it. Given
2 the particular facts of this case, where the defendants actually created the bulk of the child
3 pornography at issue, this may very well be a case where counsel views the evidence and decides
4 "don't need to see that again." The motion to compel is premature if nothing else.

5 Most importantly, especially in light of the above-referenced federal statute, the record
6 does not support a conclusion that counsel cannot effectively represent their clients by viewing
7 the child pornography at a government viewing facility as opposed to the privacy of their own
8 offices. The federal criminal justice system recognizes this fact.

9 The specific facts of this case also weigh heavily in favor of reconsidering the ruling and
10 denying the motion to compel. The evidence at issue is particularly disturbing. As noted
11 previously, there are over 20 videotapes that the defendants themselves created which depict the
12 defendants engaged in a variety of sex acts with children. As set forth in the attached
13 declaration, the court was not informed of the full nature of some of the child pornography
14 seized from defendant Giles' home. It is graphic, disgusting, disturbing footage and the court's
15 current order requires the State to give this evidence to the defense to review with their clients,
16 who are already acutely familiar with the content.

17
18 The court's order requires the State to give copies of items of evidence to defendant
19 Giles. Defendant Giles was in possession of items of evidence, both evidence from law
20 enforcement and actual, marked court exhibits, from child rape cases. This includes graphic
21 footage of a past criminal defendant engaged in repeated acts of sexual intercourse with a young
22 girl over a period of years; photographs of a child victim undergoing a rape examination at the
23 hospital; and other materials that defendant Giles obtained from law enforcement evidence
24 rooms or the Clerk's office of the Pierce County Superior Court. The particular items of
25

1 evidence that defendant Giles selected for his own sick pleasure demonstrates untrustworthiness
2 and a depravity rarely seen even in a criminal justice overwhelmed with child sexual abuse cases.
3 This record supports a finding that defendant Giles cannot be trusted with such sensitive
4 material. He does not appreciate its sensitivity; to him it is a source of pleasure and enjoyment.

5 The State reiterates that counsel for the defense has not articulated a single persuasive
6 reason as to why they need to view this evidence repeatedly in the privacy of their offices as
7 opposed to a viewing room at a government facility. The defendants know better than anyone
8 involved in the case what the evidence is against them because they created it themselves.
9 Defense counsel can watch the visual matter with their clients and then discuss it with them
10 privately afterwards. As stated previously, the State will assist and facilitate the defendants
11 viewing the evidence with their counsel if such is requested.

12 The State further reiterates that it is a crime, in Washington and in federal court, for
13 defense counsel or their employees to possess child pornography. The court should not order the
14 State to give it to them.
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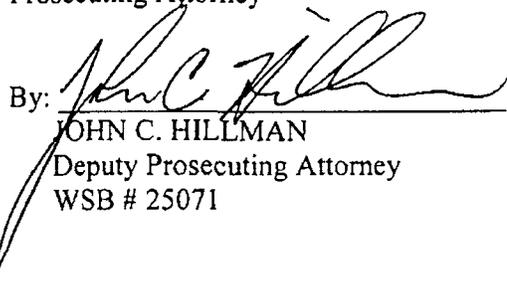
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V. CONCLUSION:

The court should reconsider its ruling in light of the new facts and law cited above. Defendants' counsel can adequately prepare for trial by viewing child pornography at a government facility.

RESPECTFULLY SUBMITTED this 26th day of September, 2006.

GERALD A. HORNE
Prosecuting Attorney

By: 
JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB # 25071

jch

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6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NOS. 06-1-03604-4
06-1-03616-8

9 vs.

10 LEE WILLIAM GILES, and
MAUREEN ELIZABETH WEAR,

DECLARATION OF JOHN HILLMAN

11 Defendants.

12 John C. Hillman declares under penalty of perjury:

13 1) That I am a deputy prosecuting attorney

14 2) I am familiar with Tacoma Police Department incident 062020445, an
15 investigation into (1) alleged acts of child sexual abuse by the two above-referenced defendants,
16 and (2) possession of child pornography by defendant Giles. I have reviewed all police reports
17 pertaining to the investigation, including a narrative of numerous videotapes and other visual
18 matter seized from defendant Giles' residence on August 2, 2006.

19 3) Included in the videotapes seized from defendant Giles' home are videotapes
20 seized from the home of a suspect/defendant in a 1991 Pierce County Sheriff's Office child rape
21 investigation. This defendant was subsequently prosecuted. The videotapes are home movies
22 this defendant made. The home movies are of this defendant repeatedly engaging his minor step-
23 daughter in sexual intercourse over years and years.. These videotapes are extremely graphic
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25

DECLARATION-1

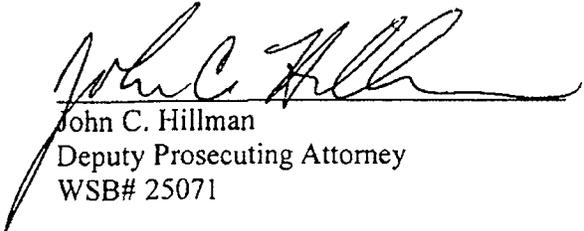
Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

1 and depict the child's face over and over. Defendant copied portions of these tapes into a
2 "highlight" video with clips of the defendants (Giles and Wear) engaging children in sex acts as
3 well. Also seized were photographs of this past suspect/defendant having sexual intercourse
4 with the child.

5 4) Also seized from defendant Giles' home are police evidence photographs from a
6 prior child sexual abuse investigation. These photographs are hospital photos of a minor child
7 undergoing sexual assault examination at the hospital.

8
9 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
10 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

11 DATED: September 26, 2006.
12 PLACE: TACOMA, WASHINGTON

13 
14 John C. Hillman
15 Deputy Prosecuting Attorney
16 WSB# 25071

APPENDIX “M”

Notices of Discretionary Review



06-1-03616-8 26309092 NTDRCA 10-13-06

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FILED
IN COUNTY CLERK'S OFFICE
A.M. OCT 18 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,
Plaintiff,
v.
MAUREEN WEAR,
Defendant.

NO. 06-1-03616-8

NOTICE FOR DISCRETIONARY
REVIEW TO THE SUPREME COURT
OF WASHINGTON

TO: C.J. Merit, Clerk, Supreme Court of Washington,
P.O. Box. 40929, Olympia, WA 98504-0929;

AND TO: Maureen Wear, Defendant, and her attorney, Mary Kay High

Plaintiff, State of Washington, seeks review by the designated appellate court of the Order Granting Defendants' Motion to Compel State to Duplicate and Produce Child Pornography in the above referenced matter entered orally on September 20, 2006, and in writing on October 3, 2006, after a denial of a motion for reconsideration on September 28, 2006, by the Honorable Lisa Worswick.

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A copy of the order is attached to this notice.

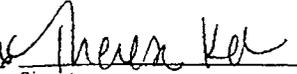
DATED: October 13, 2006.

GERALD A. HORNE
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney of record true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10-13-06 
Date Signature



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03616-8

vs.

MAUREEN ELIZABETH WEAR,

ORDER GRANTING DEFENDANT'S
MOTION TO COMPEL STATE TO
DUPLICATE AND PRODUCE CHILD
PORNOGRAPHY

Defendant.

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and provide to the defense copies of visual images of children engaged in sexually explicit conduct, if the State intends to offer such items of evidence at trial, and the Court having considered the memoranda of the parties, the arguments of counsel, and the files herein, the Court hereby FINDS:

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1. There is a compelling interest to prevent further harm to children depicted in sexually explicit conduct by precluding further duplication of the images.

2. The State has offered to allow defense counsel to view the evidence in a viewing room in the Pierce County Courthouse (County-City Building). Defense counsel has to date declined this offer.

3. The compelling interest identified in #1 is outweighed by the defendant's Sixth Amendment right to the effective assistance of counsel.

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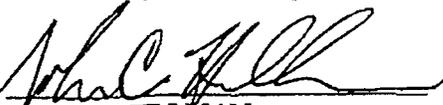
4. Defense counsel cannot adequately ^{represent her client} prepare the case for trial unless she is allowed ^(u) unfettered access ^(u) to the evidence of child pornography in state's possession.

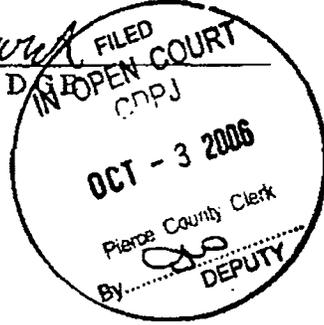
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant's motion to compel the State to duplicate and provide to defense counsel items of child pornography the State intends to offer at trial is GRANTED pursuant to the conditions of a protective order that shall be approved in advance by the Court.

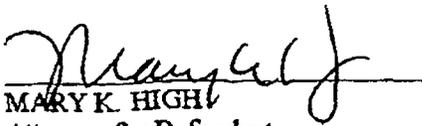
DONE IN OPEN COURT this 3RD day of October, 2006.

Presented by:


JOHN C. HILLMAN
Deputy Prosecuting Attorney
WSB# 25071



Approved for entry, notice of presentment waived:


MARY K. HIGH
Attorney for Defendant
WSB# 20123



06-1-03604-4 28309210 NTDRCA 10-13-06

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FILED
IN COUNTY CLERK'S OFFICE
A.M. OCT 18 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

v.

LEE WILLIAM GILES,

Defendant.

NO. 06-1-03604-4.

NOTICE FOR DISCRETIONARY
REVIEW TO THE SUPREME COURT
OF WASHINGTON

TO: C.J. Merit, Clerk, Supreme Court of Washington,
P.O. Box. 40929, Olympia, WA 98504-0929;

AND TO: Lee William Giles, Defendant, and his attorney, Michael E. Schwartz

Plaintiff, State of Washington, seeks review by the designated appellate court of the Order Granting Defendants' Motion to Compel State to Duplicate and Produce Child Pornography in the above referenced matter entered orally on September 20, 2006, and in writing on September 28, 2006, after a denial of a motion for reconsideration by the Honorable Lisa Worswick.

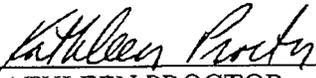
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A copy of the order is attached to this notice.

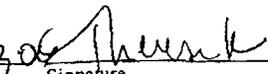
DATED: October 13, 2006.

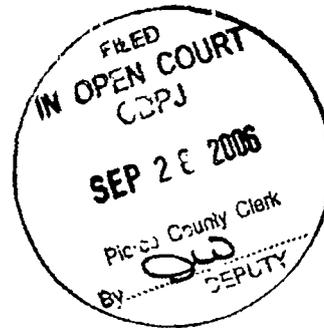
GERALD A. HORNE
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney of record true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10-13-06 
Date Signature



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03604-4

vs.

LEE WILLIAM GILES,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL STATE TO DUPLICATE AND PRODUCE CHILD PORNOGRAPHY

THIS MATTER having come before the Court on the defendant's motion to compel the State to duplicate and provide to the defense copies of visual images of children engaged in sexually explicit conduct, if the State intends to offer such items of evidence at trial, and the Court having considered the memoranda of the parties, the arguments of counsel, and the files herein, the Court hereby FINDS:

1. There is a compelling interest to prevent further harm to children depicted in sexually explicit conduct by precluding further duplication of the images.

2. The State has offered to allow defense counsel to view the evidence in a viewing room in the Pierce County Courthouse (County-City Building). Defense counsel has to date declined this offer.

3. The compelling interest identified in #1 is outweighed by the defendant's Sixth Amendment right to the effective assistance of counsel.

Office of Prosecuting Attorney
 946 County-City Building
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

1
2 4. Defense counsel cannot adequately prepare the case for trial unless he is allowed
3 unfettered access to the evidence of child pornography.
4

5 ORDER

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the defendant's
7 motion to compel the State to duplicate and provide to defense counsel items of child
8 pornography the State intends to offer at trial is GRANTED pursuant to the conditions of a
9 protective order, that shall be approved in advance by the Court.
10 Signed 9/28/06

11 DONE IN OPEN COURT this 28 day of September, 2006.

12 Lisa Worsrud
13 JUDGE IN OPEN COURT
14 CDPJ



15 Presented by:

16 John C. Hillman
17 JOHN C. HILLMAN
18 Deputy Prosecuting Attorney
19 WSB# 25071

20 Approved as to Form:

21 M. Schwartz
22 MICHAEL SCHWARTZ
23 Attorney for Defendant
24 WSB# 21024
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APPENDIX "N"

CrR 4.7

Rule 4.7. Discovery.

(a) Prosecutor's obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) when authorized by the court, those portions of grand jury minutes containing testimony of the defendant, relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant testimony that has not been transcribed;

(iv) any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(v) any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant; and

(vi) any record or prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

(i) any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(ii) any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

(iii) any information which the prosecuting attorney has indicating entrapment of the defendant.

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting attorney's obligation under this section is limited to material and information within the knowledge, possession or control of members of the prosecuting attorney's staff.

(b) Defendant's obligations.

(1) Except as is otherwise provided as to matters not subject to disclosure and protective

orders, the defendant shall disclose to the prosecuting attorney the following material and information within the defendant's control no later than the omnibus hearing: the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness.

(2) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting attorney or the defendant, may require or allow the defendant to:

(i) appear in a lineup;

(ii) speak for identification by a witness to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of the crime charged;

(v) try on articles of clothing;

(vi) permit the taking of samples of or from the defendant's blood, hair, and other materials of the defendant's body including materials under the defendant's fingernails which involve no unreasonable intrusion thereof;

(vii) provide specimens of the defendant's handwriting;

(viii) submit to a reasonable physical, medical, or psychiatric inspection or examination;

(ix) state whether there is any claim of incompetency to stand trial;

(x) allow inspection of physical or documentary evidence in defendant's possession;

(xi) state whether the defendant's prior convictions will be stipulated or need to be proved;

(xii) state whether or not the defendant will rely on an alibi and, if so, furnish a list of alibi witnesses and their addresses;

(xiii) state whether or not the defendant will rely on a defense of insanity at the time of the offense;

(xiv) state the general nature of the defense.

(3) Provisions may be made for appearance for the foregoing purposes in an order for pretrial release.

(c) Additional disclosures upon request and specification. Except as is otherwise provided as to matters not subject to disclosure the prosecuting attorney shall, upon request of the defendant, disclose any relevant material and information regarding:

(1) Specified searches and seizures;

(2) The acquisition of specified statements from the defendant; and

(3) The relationship, if any, of specified persons to the prosecuting authority.

(d) Material held by others. Upon defendant's request and designation of material or

information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting attorney, the prosecuting attorney shall attempt to cause such material or information to be made available to the defendant. If the prosecuting attorney's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary disclosures.

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters not subject to disclosure.

(1) Work product. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iv).

(2) Informants. Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Medical and scientific reports. Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) Regulation of discovery.

(1) Investigations not to be impeded. Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) Continuing duty to disclose. If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) Custody of materials. Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by

the prosecuting authority or order of the court.

(4) Protective orders. Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) Excision. When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) In camera proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) Sanctions.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

HISTORY: (Adopted April 18, 1973, effective July 1, 1973; amended, adopted June 11, 1986, effective Sept. 1, 1986; amended June 2, 2005, effective Sept. 1, 2005.)