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**NO. 79371-9**

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

**MICHAEL BOYD, PETITIONER,**

**v.**

**STATE OF WASHINGTON,  
RESPONDENT.**

*FILED*  
*NOV 1 2006*  
*CLERK OF SUPREME COURT*  
*STATE OF WASHINGTON*  
*am*

**REPLY TO RESPONSE TO  
MOTION FOR DISCRETIONARY  
REVIEW**

**BARBARA COREY, WSB#11778  
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**ORIGINAL**

**PETITIONER'S REPLY TO STATE'S RESPONSE TO MOTION FOR  
DISCRETIONARY REVIEW -**

TABLE OF AUTHORITIES

State v. Giles and Wear, Supreme Court No. 79339-5 .....6, 8, 9, 10, 11

State v. Gonzalez, 110 Wn.2d 738, 757 P.2d 925 (1988).....13

RCW 10.46.085.....3, 14, 16

RAP 4.2(a)(4)..... 8

CrR 4.7(e) .....10

CrR 4.7(h)(3).....10

A. SUPPLEMENTAL FACT STATEMENT:

The State charged the defendant in 2004 with ten counts of sexual abuse crimes, including three counts of sexual exploitation of a minor and a single count of possession of depictions of a minor engaged in sexually explicit conduct. Appendix A.

After the defendant's arraignment on the original information on November 5, 2004, defendant had four different attorneys represent him over a period of more than one year. In addition, there were numerous continuances, many of them to accommodate the schedule of the deputy prosecutor and the State's witnesses. See Appendix B.

The State did *not* oppose any of the continuances and *never* cited RCW 10.46.085 (the statute on continuances in sex cases with young victims) as a reason for not continuing the case. In fact, the State *never* averred that the alleged victims opposed any of the continuances. Likewise, the State *never* expressed any concern that the case age would adversely affect the State's case and/or any of its witnesses.

The parties had many discussions about the release of and defense access to the computer images/ "mirror image" of hard-drive, etc. In July, 2006, the State provided "a stipulation and agreed protective order regarding image and audio evidence" which the parties entered into.



defendant. Not only did the defendant need to interview the newly named alleged victims but also the defendant needed to view additional computer evidence.

Despite repeated attempts to interview the alleged victims in advance of trial at a time and place where the defense could use the photographic evidence, the State steadfastly refused to bring the victims to Pierce County for the interviews. The victims refused to be interviewed without the presence of the prosecutor. The State would not allow the defense to possess the photographic evidence to use in pretrial interviews. Appendix E.

Although the verbatim report of proceedings from the motion to compel computer evidence is not yet before this court, this court will note that the trial court's reasoning was confusing and contrary to legal authority. The trial court readily determined that the materials sought by the defendant were material to the preparation of the defense and even sua sponte observed that the defendant was entitled to go on a "fishing expedition" in the preparation of its case. After determining that the items sought were material to the preparation of the defense and that the defense should have sufficient time even to go on a "fishing expedition" in its examination of the materials, the court did not make any findings

regarding "substantial risk" of harm to any person as required by CrR 4.7(e)(2). Instead, the trial court, after reviewing the defendant's proposed protective order (based on the order currently pending review in State v. Giles and Wear, Supreme Court No. 79339-5) without explanation decided that the instant case was somehow "different" from those cases. The trial court made this observation despite the obvious fact that both cases involved multiple counts of child rape/child molestation and also sexual exploitation/possession of depictions of minors engaged in sexually explicit conduct. The trial court noted that the rules of discovery are to be applied in a case specific manner and then, without identifying any substantive difference between the cited cases, denied the defendant's motion and imposed restrictions on the defense access to the computer evidence and also on the use that material in pretrial interviews. The trial court asked the State to prepare an order immediately, but the deputy prosecutor delayed preparation because of a trial commitment. As a result of the deputy prosecutor's inaction, more delay was interposed in the proceedings.

The trial court's order limiting access to materials imposed time constraints on the defendant's examination of the computer materials, prohibited the use of photos during child victim interviews (even where

the children being interviewed were the very subjects of the alleged photos) without court permission which needed to be obtained at an adversarial hearing in open court, and otherwise compromised the defendant's ability to prepare for trial.

Further, although the State assured the court that it would make the computer evidence/photographs available at any time and tentatively agreed to make them available over the weekend, the State retracted that offer. The State's expert also informed the parties that he would need 1-2 hours to prepare a "mirror image" of the hard-drive, but almost immediately amended that estimate to several days. Appendix E.

As of this date, the defense expert has made two trips to Pierce County to review the materials during week days when defendant's trial counsel has been available to participate.

B. LAW AND ARGUMENT IN REPLY TO THE STATE'S RESPONSE:

1. BY SEEKING REVIEW OF THE IDENTICAL ISSUE IN STATE V. GILES AND STATE V. WEAR, THE STATE HAS CONCEDED THAT REVIEW IS APPROPRIATE AND FURTHER THE STATE CANNOT IDENTIFY ANY PRINCIPLED BASIS FOR DISTINGUISHING THESE CASES.

As noted in the motion for discretionary review, the State seeks discretionary review on the identical issue presented in this case in Supreme Court no. no. 79339-5. In seeking discretionary review in those cases, the State relies upon the same Rules of Appellate Procedure (RAP) and arguments as that the defendant makes in this case. The defendant and the State agree that the cases present an urgent issue of broad public import which requires prompt and ultimate determination by this case. RAP 4.2(a)(4). Because this case presents exactly the same issue except that the trial court (a different trial court in the same county as the other case) reached an opposite conclusion, it is clear that there is substantial confusion in trial courts regarding discovery in these cases. Both of these trial courts cannot be correct in their application of the law. If the issue warrants review in one of the cases, then the issue warrants review in all of the cases. Review of the consolidated cases will enable this court to consider the records of two different trial courts and to consider all of the arguments raised thus far in

both cases. This is especially important because the trial court's order in the instant case imposes many far-reaching conditions regarding not only access to but also use of the computer/photographic evidence in the defense preparation of this case. These issues also must be resolved by this court.

As noted in the instant case the trial court's order far exceeded the scope of the protective order entered in the Giles and Wear cases. In this case, the trial court imposed restrictions upon the defendant's ability even to conduct pretrial interviews using the photographs that form the very basis for many of the charges. In addition, the trial court required the defendant to disclose his computer evidence expert even before the expert had the opportunity to examine the questioned items. These additional restrictions severely impair the defendant's ability to prepare his defense without interference by the State and without having to disclose information that may never be ripe for disclosure. As argued in the motion for discretionary review, these additional restrictions violate well-established constitutional protections for the defense pretrial preparation. The State has not addressed these additional restrictions in their reply and therefore apparently concedes that these restrictions likewise should be reviewed.

Distilled to its essence, the State's argument is that discretionary review is not appropriate in this case because the State agrees with the trial

court's ruling limiting defendant's access to discovery. The State attempts to persuade that the trial court's ruling in this case (just as in the other cases in which it seeks review) cannot meet the criteria for review because the trial court's ruling was discretionary in nature. Of course, that same argument could be used against the State's petition for review in the other case and is intellectually incongruous with its position in those cases.

By seeking review on the identical issue in Giles and Wear, the State in fact has conceded the merits of this petition for review.

2. THE TRIAL COURT DID NOT PROPERLY APPLY CrR 4.7(e) WHEN RULING ON THE DEFENDANT'S DISCOVERY MOTION.

Although the State notes there is no verbatim report of proceedings yet before this court, the State incorrectly assures this court that the trial court properly applied CrR 4.7(e) when it denied the defendant's motion and entered the restrictive order. That rule provides for disclosure when the items sought are material to the preparation of the defense, CrR 4.7(e)(1), and when there is no "substantial risk" to any person from such disclosure, CrR 4.7(e)(2). Viewed in total, CrR 4.7 unequivocally provides for materials to be furnished to the defense because the rules require defense counsel to maintain custody of such materials. CrR 4.7(h)(3).

In this case, the trial court misapplied the rules. The defendant (unlike the State's appellate counsel) was present for the argument and ruling. The trial court's ruling was confusing and poorly reasoned. The trial court had no difficulty finding that the items sought by the defendant were material to his defense. The trial court did not make any findings whatsoever about "substantial risk" to anyone that would counterbalance its finding of materiality. The State likewise did not present any evidence regarding substantial risk until *after* the court had entered its written order when the State belatedly and improperly attempted to buttress the record with a declaration from Lucy Berliner. The trial court's reason for denying the motion was unclear. The trial court held that the instant case was "different" than the Giles and Wear cases and that this unexplained "difference" warranted denial of the defendant's motion in this case just as it had warranted granting the defendants' motions in the other case.

Further, contrary to the State's argument, the trial court in fact did restrict the defendant's access to the materials. Although the State has had and continues to have unlimited access to the materials, the trial court, at the State's urging, limited the defense to two opportunities to view the evidence and then required the defense to obtain a court order for additional investigation. The trial court made no finding that two opportunities it



court prohibited the defense use of the photographs and computer evidence at pretrial interviews without order of the court to be obtained at an adversarial hearing. Thus, the trial court has prohibited the defendant from showing the subjects of the photos copies of the photos so that the defendant can fully and meaningfully prepare for trial.

The State's argument that release of this discovery to the defense would be contrary to legislative directive attempts restrict the dissemination of child pornography simplistically deflects attention from the real issue before this court – that is, whether the constitutional principles and discovery rules require that the defendant has sufficient unfettered access to the discovery to prepare to meet the 28 charges against him in this case. The issue implicates the defendant's fundamental right to effective assistance from trial counsel.

The State has likewise failed to address why it is proper for the State to disseminate such photographs in the course of its pretrial preparation and also in open court to the public and yet somehow improper to provide the materials to the defendant who is facing decades of prison if convicted.

Further, this court should reject the State's argument that State v. Gonzalez, 110 Wn.2d 738, 757 P.2d 925 (1988) is relevant to the issue in this case. In Gonzalez, this court considered whether the defense was

entitled to the discovery of the alleged rape victim's other sexual partners. In this case, the defendant wants discovery that depicts the alleged victims in the very acts that form the basis of the charges. There is nothing collateral about the defendant's discovery request in the instant case.

Likewise, the State's citation to the "Adam Walsh" Act has no bearing on the issues before this court. Federal statutes governing criminal procedure in federal courts lack authority in state courts.

Further, the provision of the requested discovery to the defense in no way countermands the legislative enactments directed against the production and possession of child pornography. To the contrary such legislative goals are furthered by constitutional prosecutions of such criminal acts.

3. THE STATUS OF THIS CASE, AS CONTRASTED WITH THE STATUS OF THE GILES AND WEAR CASES, IS NOT A REASON TO DENY REVIEW.

Finally, the State attempts to argue that this court should not take review because it alleges that the defendant has been dilatory in trial preparation in this case and therefore should be punished by being denied review of an issue that the State readily concedes is meritorious and deserving of this court's attention. Of course, there is no authority for the State's position, even if the State's position had a scintilla of merit. Further,

there is abundant evidence in the record to establish that the State has engaged in obstructionist behavior designed to prevent the defendant from accessing the materials necessary for trial preparation. In addition, it is misleading for the State to invoke at this time and for the first time ever, the statute regarding continuances in child sex cases, RCW 10.46.085, when the State never before has made this argument and there is no evidence in the record that any of the alleged victims oppose the continuance of this case.

The defendant denies that he has been dilatory in case preparation and notes that many activities occur in trial preparation which are not known to the State. The record affirms that the defendant made numerous attempts to obtain the materials at issue. The parties entered in a stipulated order which the State then refused to honor. The State offered to make the materials available over weekends and at night when defendant realistically could view them, and then almost immediately retracted that offer.

However, more importantly, on the very eve of trial, the State added 20 counts to the information nearly *two years* after initially charging this case. Many of those counts allege sexual exploitation of minors and possession of depictions of minors engaged in sexually explicit conduct. When the State rearraigned the defendant on those charges *a mere 46 days*

*before trial*, the State should have expected the defendant to require additional time for preparation.

The State now has alleged that the defendant used four children to commit the crime of sexual exploitation of a minor. The Amended Information alleges that DC, SC, SR, and BW all were photographed in sexually explicit conduct. (Counts 9, 10, 11, 12, 17, 18, 20). [Note; the State is wrong when it asserts that only two of the victim are named in the sexual exploitation counts – page 17 of the State’s response.]

Moreover,, the State’s argument that discretionary review should be denied because of the ages of the alleged victims rings false. Prior to filing its response to the petitioner’s motion for discretionary review, the State has **never** invoked RCW 10.46.085 as a basis for opposing a continuance in this case. In fact, many of the continuances were sought by the State. For example, on April 21, 2005, the court continued the trial date from May 31, 2005 to June 16, 2005 in order to accommodate the deputy prosecutor’s attendance at a CLE. On June 2, 2005, the court continued the trial from June 16, 2005 to September 8, 2005, to accommodate the parties’ trial and vacation schedules. On April 6, 2006, the court continued the trial date from August 9, 2006 to September 7, 2006 to accommodate the deputy prosecutor’s vacation schedule. The prosecutor also sought and obtained a

continuance of the September 7, 2006 trial date because its forensic computer expert was not available .It is significant that the State has *never* argued at any of the continuance motions in the trial court that the ages of the children provided any basis upon which to deny a continuance. Indeed, the State moved for and received continuances earlier this year in order to accommodate the deputy's prosecutor's vacation schedule and the unavailability of its expert (who also is the supervisor for the defense trial preparation under the current court order). Having sought many continuances of its own during the pendency of this case, the State cannot credibly argue now for the first time that the case should not be continued for reasons of the victims' ages.

The State also attempts to distinguish the instant case from the cases in which it seeks discretionary review. The State notes that the defendant, if convicted, could raise these issues on direct appeal. Although that may be true, the State has acknowledged the serious issues raised by discovery matters in the prosecution of cases of sexual exploitation of minors. If the State's position on discovery is rejected by this court, then Mr. Boyd will irrevocably have lost the opportunity for his counsel to prepare for trial in the matter counsel deems appropriate. Mr. Boyd and his counsel are provided one single opportunity to interview the alleged victims and they should be

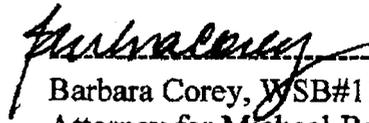
permitted to do so under the most favorable circumstances. Where all parties have agreed to numerous continuances in this case and where there are no speedy trial issues, this court should accept review and not require the defendant to proceed to trial on 28 felony counts where the relevant discovery orders entered by the trial court are likely erroneous.

Finally, this court should reject the State's argument that review should be denied because some of the victims are not involved in the sexual exploitation counts. Of course, the State controls the remedy for this situation if, in fact, the State legitimately believes this is a problem. This is so because the State retains the ability to dismiss those unrelated counts from the victims in the sexual exploitation case and to refile those counts in a separate case. This action would permit the State to go forward now on the counts that do not involve the computer/photographic evidence.

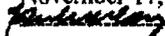
F. CONCLUSION:

For the foregoing reasons, the petitioner Michael Boyd respectfully asks this court to grant this motion for discretionary review. His petition for review presents substantial and urgent issues which require resolution by this court. These substantial and urgent issues affect his most fundamental rights to due process and effective assistance of counsel. Although his case is admittedly older than the other two cases where review is sought, Mr. Boyd is no less deserving of justice than those defendants.

DATED November 17, 2006.

  
Barbara Corey, WSB#11778  
Attorney for Michael Boyd

Declaration of Service: I declare under penalty of perjury under the laws of the State of Washington that I served a copy of this motion via facsimile on Deputy Prosecutor Kathleen Proctor, Pierce County Prosecuting Attorney's Office, 930 Tacoma Ave. S., Tacoma, WA on November 17, 2006. Signed in Tacoma, Washington on November 17, 2006.

  
Barbara Corey

# APPENDIX A



04-1-05178-1 22080813 INFO 11-08-04

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NOV - 5 2004 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05178-1

vs.

MICHAEL A BOYD,

INFORMATION

Defendant.

598 44569

DOB: 7/19/1952

SEX : MALE

RACE: WHITE

PCN#:

SID#: UNKNOWN

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 MICHAEL A BOYD of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously being at least 24 months older than D.C., engage in sexual intercourse with D.C., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, 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 MICHAEL A BOYD 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 MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously, being at least 36 months

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1 older than D.C., have sexual contact with D.C., who is less than 12 years old and not married to the  
2 defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

COUNT III

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

9 That MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of  
10 June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously, being at least 36 months  
11 older than S.C., have sexual contact with S.C., who is less than 12 years old and not married to the  
12 defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

COUNT IV

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

19 That MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of  
20 June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously, being at least 36 months  
21 older than S.C., have sexual contact with S.C., who is less than 12 years old and not married to the  
22 defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

COUNT V

23 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
24 authority of the State of Washington, do accuse MICHAEL A BOYD of the crime of SEXUAL  
25 EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
26 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
27 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
28 proof of one charge from proof of the others, committed as follows:

29 That MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of  
30 June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously aid, invite, employ,  
31 authorize, or cause D.C., a minor, to engage in sexually explicit conduct, knowing that such conduct will

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1 be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace  
2 and dignity of the State of Washington.

COUNT VI

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 MICHAEL A BOYD of the crime of SEXUAL  
5 EXPLOITATION OF A MINOR, 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 MICHAEL A BOYD, in the State of Washington, during the period between the 1st day of  
8 June, 2003 and the 1st day of January, 2004, did unlawfully and feloniously aid, invite, employ,  
9 authorize, or cause S.C., a minor, to engage in sexually explicit conduct, knowing that such conduct will  
10 be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace  
and dignity of the State of Washington.

COUNT VII

11 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
12 authority of the State of Washington, do accuse MICHAEL A BOYD of the crime of CHILD  
13 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime  
14 based on the same conduct or on a series of acts connected together or constituting parts of a single  
15 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:

16 That MICHAEL A BOYD, in the State of Washington, on or about the 28th day of August, 2004,  
17 did unlawfully and feloniously, being at least 36 months older than S.R., have sexual contact with S.R.,  
18 who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against  
the peace and dignity of the State of Washington.

COUNT VIII

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 MICHAEL A BOYD 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 MICHAEL A BOYD, in the State of Washington, on or about the 28th day of August, 2004,  
did unlawfully and feloniously, being at least 36 months older than S.R., have sexual contact with S.R.,

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1 who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against  
2 the peace and dignity of the State of Washington.

COUNT IX

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 MICHAEL A BOYD of the crime of SEXUAL  
5 EXPLOITATION OF A MINOR, 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 MICHAEL A BOYD, in the State of Washington, on or about the 28th day of August, 2004,  
8 did unlawfully and feloniously aid, invite, employ, authorize, or cause S.R., a minor, to engage in  
9 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 against the peace and dignity of the State of Washington.

COUNT X

11 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
12 authority of the State of Washington, do accuse MICHAEL A BOYD of the crime of POSSESSION OF  
13 DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, a crime of the same or  
14 similar character, and/or a crime based on the same conduct or on a series of acts connected together or  
15 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:

16 That MICHAEL A BOYD, in the State of Washington, on or about the 7th day of October, 2004,  
17 did unlawfully, feloniously, and knowingly possess visual or printed matter depicting a minor engaged in  
18 sexually explicit conduct, contrary to RCW 9.68A.070, and against the peace and dignity of the State of  
Washington.

19 DATED this 4th day of November, 2004.

20 WILKESON POLICE DEPARTMENT  
WA02720

GERALD A. HORNE  
Pierce County Prosecuting Attorney

21 mer

22 By:



23 MARY E. ROBNETT  
Deputy Prosecuting Attorney  
24 WSB#: 21129

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NO. 04-1-05178-1

## DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

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 have had a conversation with Frank Clark, Ken Swanson, and Keri Arnold-Harms and am familiar with the investigation conducted by the WILKESON POLICE DEPARTMENT and the Pierce County Prosecuting Attorney's Office, incident number 04000059;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the period between the 1<sup>st</sup> day of June, 2003 and the 28<sup>th</sup> day of August, 2004, the defendant, MICHAEL A BOYD, did commit the crimes of Rape of a Child in the First Degree, Child Molestation in the First Degree, Sexual Exploitation of a Minor, and Possession of Depictions of Minors Engaged in Sexually Explicit Conduct.

On August 30, 2004, Wilkeson Police Officer Greene contacted a 10 year old child identified as S.R. who was at the Enumclaw Hospital with her mother. S.R. reported that on August 28, 2004, she spent the night at her friend's house; her friend's step father is the defendant, Michael A. Boyd; the defendant touched both of them in the vaginal area over their clothing, and he photographed them without any clothing on. Officer Greene contacted the defendant and his step daughter, a 10 year old female identified as S.C. S.C. told the officer no one photographed her over the weekend. The officer looked at the defendant's camera and the defendant showed the officer some photo files on his computer. The defendant refused to let the officer look at some items on the computer claiming there could be photographs of himself and his wife.

On September 16, 2004, S.R. was interviewed by a forensic child interviewer. During the interview S.R. disclosed the following: when she spent the night with her friend, the defendant came into the bedroom, unbuttoned his pants, and made them touch his private area; S.R. touched his private spot with her hand; he made her rub on it; the next day after her friend's mother left for work, the defendant took pictures of her naked; he grabbed her private area and "opened it up" and took pictures; her friend also took a picture of S.R. and the defendant; the defendant took multiple naked pictures of S.R. and S.C. in various poses separately and together; the defendant rubbed her vaginal area with his hand on her skin; the defendant showed the girls how to "make sperm" by using their hands on his private part; the defendant also showed the girls a movie where a woman got sperm in her mouth; S.R. said that she is not allowed to talk to S.C. anymore because S.C.'s mother does not believe her. S.R. was born 01-29-93.

On September 30, 2004, S.C. was interviewed at school by a forensic child interviewer and S.C. made no disclosure of sexual abuse. S.C. did tell the interviewer that she was no longer able to see her friend S.R., and she also said she could no longer see her 11 or 12 year old sister D.C. because D.C. lied and said Michael tried hurting her. S.C. told the interviewer that D.C. now lives with their dad in Idaho.

On October 7, 2004, Pierce County Prosecuting Attorney Investigator Frank Clark executed a search warrant at the defendant's house. The defendant's wife told Clark that the day after the Wilkeson Police contacted them, the defendant removed a computer and a camera from the residence. Clark seized two computers at the residence and one computer from the defendant's business. Clark also seized a camera and 43 discs. Clark examined the computer that had been removed from the residence and Clark determined that it had been reformatted and new soft wear installed about September 14, 2004. Clark

DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -1

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Main Office (253) 798-7400

04-1-05178-1

1 examined the camera and determined that it had been formatted, which is not necessary or normal for  
 2 operation; the formatting prevented Clark from being able to locate images on the camera. Clark  
 3 examined the discs and determined that four discs contained business documents bearing the defendant's  
 4 name and many images of child pornography. Clark conducted a forensic examination of the hard drives  
 5 of the computers seized from the residence. On one the computers, Clark located numerous business  
 6 documents bearing the defendant's name and many images of child pornography. The total images of  
 7 child pornography located exceeds 1,400 some of which are close up depictions of a child's vagina as  
 8 described by S.R. and S.C.

9 In October 2004, S.C. natural father who lives in Idaho sought custody of her and she is now  
 10 living in Idaho with her father. S.C.'s older sister, D.C. had previously decided to live with their father in  
 11 Idaho. Their father reported that D.C. had made some limited disclosure of sexual abuse.

12 On October 12, 2004, D.C. was interviewed by a detective in Idaho and D.C. disclosed that  
 13 during the summer of 2003, the defendant started touching her breasts and vaginal area; the touching  
 14 happened when their mother was at work; the defendant would put his mouth on her vaginal area and he  
 15 would make her rub up and down on his penis with her hand. D.C. said the last incident was around  
 16 Christmas of 2003 and she then went to live with her dad in Idaho. D.C. was born 11-15-91.

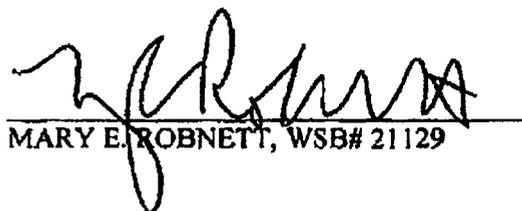
17 On October 28, 2004, S.R. was interviewed by a detective in Idaho and she disclosed that during  
 18 the summer when D.C. lived with them, the defendant touched her vaginal area with his hand; S.R. also  
 19 said the defendant touched D.C. but when D.C. told what was happening their mom did not believe her;  
 20 S.R. said she was afraid to tell what he was doing for fear the defendant would be mad at her and for fear  
 21 that her mom would not believe her; S.R. said that the defendant takes pictures of her and D.C. sitting  
 22 with their legs spread apart; she said she and Diane both had to touch the defendant's private part and sit  
 23 on his lap when he had no clothes on. S.C. was born 06-14-94.

24 On November 5, 2004, another 10 year old girl, B.W., was interviewed by a forensic child  
 interviewer. B.W. disclosed that she has been at the defendant's house and he has twice photographed her  
 and S.C.'s in numerous poses with her vagina and bottom exposed. B.W. also more recently told her  
 that someone might be asking about him and she should she should say nothing happened.

Investigation is on-going regarding the forensic examination of the computer hard drive and discs  
 and identification of potential victims. The State anticipates adding charges, including charges related to  
 B.W., as the investigation proceeds.

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

DATED: October 9, 2004  
 PLACE: TACOMA, WA

  
 MARY E. ROBNETT, WSB# 21129

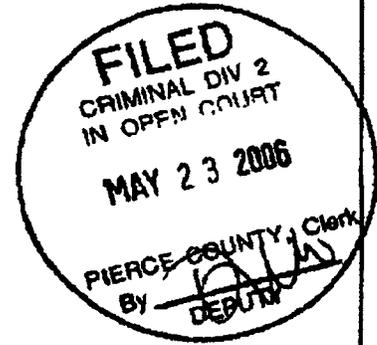
DECLARATION FOR DETERMINATION  
 OF PROBABLE CAUSE -2

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

# APPENDIX B



04-1-05178-1 25513805 DCLR 05-23-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05178-1

vs.

MICHAEL ALLEN BOYD

DECLARATION OF HUGH K. BIRGENHEIER

Defendant.

HUGH K. BIRGENHEIER, declares under penalty of perjury:

1) I am a Deputy Prosecuting Attorney for the Pierce County Prosecutor's Office. I am the Deputy Prosecuting Attorney assigned to prosecute the case against Mr. Boyd whose trial is currently set for September 7, 2006. It is anticipated that the trial against Mr. Boyd will take two to three weeks to try.

2) I am also one of the Deputy Prosecuting Attorneys assigned to prosecute the case in State of Washington v. Richard MacDonald Pierce County Superior Court cause number 05-1-01550-2. My co-counsel on that case is Deputy Prosecuting Attorney Justin Ericksen. Mr. MacDonald is charged with Murder in the Second Degree and Felon in Possession of a Firearm. The State of Washington is in the process of filing another case against Mr. MacDonald for his conduct with various witnesses while his case was pending.

3) The case against Mr. MacDonald is pre-assigned to The Honorable Frederick Fleming. Mr. MacDonald's trial was schedule to begin on May 31, 2006 but on May 19, 2006

DECLARATION-1  
gendec.dot

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

CAUSE NO. 04-1-05178-1

Judge Fleming granted a motion to continue the trial date until September 13, 2006. Because the case against Mr. MacDonald is pre-assigned I want to make sure that the State of Washington is ready to try the case in Judge Fleming's court on September 13, 2006.

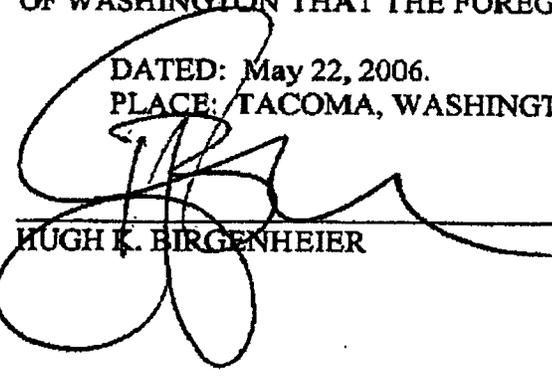
4) Earlier today I spoke to Barbara Corey to ask if the defense would agree to continue the case against Mr. Boyd. Ms. Corey informed me that she had trial set in the beginning of October which would not allow her to agree to a continuance.

5) I then called Phillip Thornton. Mr. Thornton represents Mr. MacDonald. I asked Mr. Thornton to accelerate the case against Mr. MacDonald but he informed that due to his schedule he would not be able to accelerate the case.

6) It appears that the trial involving Mr. Boyd will either have to be accelerated or continued if I am going to be available to try my pre-assigned case on September 13, 2006 before Judge Fleming.

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

DATED: May 22, 2006.  
PLACE: TACOMA, WASHINGTON

  
\_\_\_\_\_  
HUGH K. BIRGENHEIER

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04-1-05178-1 25250084 ORCTD 04-07-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, )  
Plaintiff )  
vs. )  
Michael Allen Boyd )  
Defendant )

Cause No. 04-1-05178-1

ORDER CONTINUING TRIAL

This motion for continuance is brought by  state  defendant  court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons: DPA has scheduled vacation on August 2006 & is unavailable on previously scheduled date.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING	7/27/06	1:30	CDPJ	1509462
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>8/9/06</u>	IS CONTINUED TO: <u>9/7/06</u> @ 8:30 am Room			

Expiration date is: 10/2/06 (Defendant's presence not required)

TFT days remaining: 30

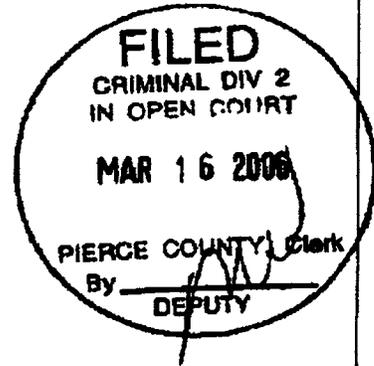
DONE IN OPEN COURT this 6<sup>th</sup> day of July, 2006

Michael A. Boyd  
Defendant  
Submalay  
Attorney for Defendant/Bar # 11778

Althottus  
Judge  
14720  
Prosecuting Attorney/Bar #

I am fluent in the \_\_\_\_\_ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Pierce County, Washington  
Interpreter/Certified/Qualified



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05178-1

vs.

MICHAEL ALLEN BOYD,

MOTION TO ACCELERATE TRIAL DATE

Defendant.

Comes now the State of Washington by and through Hugh K. Birgenheier, Deputy Prosecuting Attorney and moves the court for an order accelerating the trial date in this matter. This motion is based on the records and files of this case as well as the unavailability of the Deputy Prosecuting Attorney during portions of the month of August 2006.

DATED this 16th day of March, 2006.

GERALD A. HORNE  
Prosecuting Attorney

By: [Signature]  
Hugh K. Birgenheier  
Deputy Prosecuting Attorney  
WSB# 14720

hkb

ORIGINAL



04-1-05178-1 25817430 MTC 07-18-06

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. JUL 18 2006 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-05178-1

vs.

MICHAEL ALLEN BOYD,

Defendant.

MOTION TO CONTINUE TRIAL DATE

Comes now the State of Washington by and through Hugh K. Birgenheier, Deputy Prosecuting Attorney and moves the court for an order continuing the trial date in this matter. This motion is based on the unavailability of Investigator Frank Clark of the Pierce County Prosecutor's Office. Investigator Clark is the lead investigator in this case and was the law enforcement officer who completed the forensic examination on the defendant's computer. Investigator Clark is a necessary witness for the State of Washington...

DATED this 17<sup>th</sup> day of July, 2006.

GERALD A. HORNE  
Prosecuting Attorney

By: \_\_\_\_\_

Hugh K. Birgenheier  
Deputy Prosecuting Attorney  
WSB# 14720

# APPENDIX C



04-1-05178-1 25772429 PORD 07-11-06

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUL 10 2006 P.M.

PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk DEPUTY

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

**STATE OF WASHINGTON,**

**Plaintiff CAUSE NO. 04-1-05178-1**

**MICHAEL ALLEN BOYD,**

**STIPULATION AND AGREED  
PROTECTIVE ORDER REGARDING  
IMAGE AND AUDIO EVIDENCE VIA  
DVD and/or AUDIO RECORDING**

**Defendant.**

The defendant, MICHAEL ALLEN BOYD, and the Pierce County Prosecuting Attorney, by and through their respective counsel, hereby stipulate to the entry of a Protective Order regarding the use and distribution of image and audio evidence in the form of DVD and/or audio recording provided in the course of discovery in the above-entitled cause and agree to the following conditions, which apply to the defendant, both prosecution and defense counsel, and their respective employees and agents:

1. The evidence shall not be used for any purpose other than to prepare for the prosecution and/or 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 any member or associate of the media unless expressly permitted by court order.
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. This provision is not meant to prohibit the defense or prosecution from exhibiting the evidence to any person(s) necessary to the preparation and/or presentation of the prosecution or defense case.
4. The evidence shall not be duplicated, except as required in connection with the prosecution or defense of the above-entitled cause, provided that any such duplication shall only be pursuant to a court order, each resulting copy shall be governed by this Order as if an original.

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

5. Other than an original of the evidence maintained by the law enforcement or interviewing agency, any additional copies shall not be provided to anyone not employed by either the Pierce County Prosecuting Attorney's Office or counsel for the defendant with the exception of defense or prosecution experts.

6. The defendant shall not, under any circumstances, be permitted to retain or possess the DVD and/or audio tape and is only permitted to review the DVD/tape in the presence of defense counsel, a defense investigator, or a defense expert. The defendant shall not be permitted to review the DVD and/or audio tape alone.

7. The DVD and/or audio tape shall be maintained by defense counsel in a secure location.

8. A transcript of the recording may be prepared at the expense of the party seeking transcription, provided that before either party provides the evidence to a transcriber or transcriptionist, the party shall serve that person with a copy of this Order. Proof of service of this order shall be retained in the prosecution or defense attorney's file until such a time as the evidence is returned to the Pierce County Prosecuting Attorney's Office or destroyed in accordance with this Order. A copy of the transcript shall be given to opposing counsel.

9. Neither the transcript of the recording, nor any portion thereof, shall be divulged to any person not authorized by the terms of this stipulation to review the DVD and/or audio recording.

10. Before either party provides the evidence to an expert witness, the party shall serve the expert with a copy of this Order. Proof of service of this Order shall be retained in the prosecution or defense attorney's file until such a time as the evidence is returned to the Pierce County Prosecuting Attorney's Office.

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

12. Either party may petition the court for access to the evidence at a later date upon a showing that the access is for a legitimate purpose in connection with the above-entitled cause. A legitimate purpose shall include, but is not limited to, investigation and preparation of any legal action for the benefit of the defendant.

13. A copy of this Order shall be kept with the DVD and/or audio tape at all times.

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/

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

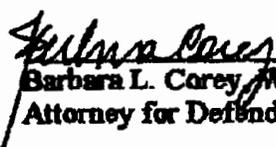
14. Any violation of this Order may be the subject of personal or professional sanction by the court presiding over the proceedings for which the discovery/records are sought or may subject counsel to other sanctions permitted by law.

DATED this 29 day of June, 2006.

  
\_\_\_\_\_  
JUDGE **SUSAN K. SERKO**

Presented by:

  
\_\_\_\_\_  
**Hugh Birzenhafer, WSBA #**  
**Deputy Prosecuting Attorney**

  
\_\_\_\_\_  
**Barbara L. Corey, WSBA # 11778**  
**Attorney for Defendant**

**FILED**  
**IN COUNTY CLERK'S OFFICE**

**A.M. JUL 10 2006 P.M.**

**PIERCE COUNTY, WASHINGTON**  
**KEVIN STOCK, County Clerk**  
BY  **DEPUTY**

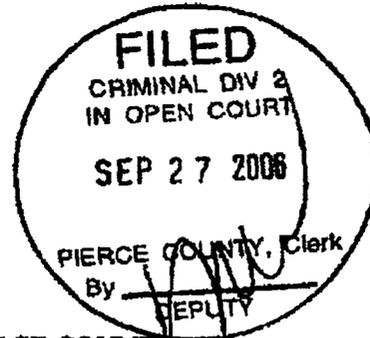
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Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

## APPENDIX D

1  
2 ORIGINAL



04-1-05178-1 28212314 AMINF 08-27-06



5  
6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 04-1-05178-1

SEP 26 2006

9 vs.

10 MICHAEL ALLEN BOYD,

AMENDED INFORMATION

11 Defendant.

12 DOB: 7/19/1952  
13 PCN#: 538254754

SEX : MALE  
SID#: 22517795

RACE: WHITE  
DOL#: UNKNOWN

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 MICHAEL ALLEN BOYD of the crime of CHILD  
17 MOLESTATION IN THE FIRST DEGREE, committed as follows:

18 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
19 the 1st day of June, 2002 and the 1st day of September, 2003, did unlawfully and feloniously, being at  
20 least 36 months older than D.C., have sexual contact (hand/breast contact during fireworks) with D.C.,  
21 who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic  
22 violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
23 Washington.

24 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 MICHAEL ALLEN BOYD 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:

AMENDED INFORMATION- 1

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

1 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
2 the 1st day of June, 2002 and the 1st day of September, 2003, did unlawfully and feloniously, being at  
3 least 36 months older than D.C., have sexual contact (hand/breast contact involving lotion) with D.C.,  
4 who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic  
5 violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
6 Washington.

6 COUNT III

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

13 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
14 the 1st day of June, 2002 and the 1st day of September, 2003, did unlawfully and feloniously, being at  
15 least 36 months older than D.C., have sexual contact (hand/breast contact during belly rubs) with D.C.,  
16 who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic  
17 violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
18 Washington.

15 COUNT IV

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 MICHAEL ALLEN BOYD of the crime of CHILD  
18 MOLESTATION IN THE FIRST 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
23 the 1st day of June, 2002 and the 1st day of September, 2003, did unlawfully and feloniously, being at  
24 least 36 months older than D.C., have sexual contact (hand/vaginal contact during belly rubs) with D.C.,  
who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic  
violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
Washington.

AMENDED INFORMATION- 2

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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 MICHAEL ALLEN BOYD 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, 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between the 1st day of June, 2002 and the 14th day of November, 2003, did unlawfully and feloniously being at least 24 months older than D.C., engage in sexual intercourse (oral/vaginal contact during leg kisses) with D.C., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

COUNT VI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ALLEN BOYD 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between the 1st day of June, 2002 and the 14th day of November, 2003, did unlawfully and feloniously, being at least 36 months older than D.C., have sexual contact (hand/penile contact during "vertical") with D.C., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

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 MICHAEL ALLEN BOYD 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

AMENDED INFORMATION- 3

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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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
4 the 1st day of June, 2002 and the 31st day of December, 2003, did unlawfully and feloniously, being at  
5 least 36 months older than S.C., have sexual contact (hand/vaginal) with S.C., who is less than 12 years  
6 old and not married to the defendant, contrary to RCW 9A.44.083, a domestic violence incident as  
7 defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

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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 MICHAEL ALLEN BOYD 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 1st day of June, 2002 and the 31st day of December, 2003, did unlawfully and feloniously, being at  
least 36 months older than S.C., have sexual contact (hand/penile while sitting on the defendant's lap)  
with S.C., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, a  
domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
Washington.

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 MICHAEL ALLEN BOYD of the crime of 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 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 1st day of June, 2002 and the 31st day of December, 2003, did unlawfully and feloniously, being a  
parent, legal guardian, or person having custody or control of a minor, permit and/or did aid, invite,  
authorize, or cause D.C., a minor, to engage in sexually explicit conduct, knowing that the conduct will be  
photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b) and/or (c), a domestic

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1 violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of  
2 Washington.

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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 MICHAEL ALLEN BOYD of the crime of 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 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between the 1st day of June, 2002 and the 31st day of December, 2003, did unlawfully and feloniously, being a parent, legal guardian, or person having custody or control of a minor, and/or did aid, invite, authorize, or cause S.C., a minor, to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b) and/or (c), a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

COUNT XI

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of 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 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between the 27th day of August, 2004 and the 28th day of August, 2004, did unlawfully and feloniously aid, invite, employ, authorize, or cause S.R., a minor, to engage in sexually explicit conduct, (as depicted in the images located on the defendant's computer from day one) knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT XII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of SEXUAL  
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1 EXPLOITATION OF A MINOR, 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
6 the 27th day of August, 2004 and the 28th day of August, 2004, did unlawfully and feloniously, being a  
7 parent, legal guardian, or person having custody or control of a minor, permit S.C., a minor, to engage in  
8 sexually explicit conduct, (as depicted in the images located on the defendant's computer from day one)  
9 knowing that the conduct will be photographed or part of a live performance, contrary to RCW  
10 9.68A.040(1)(c), a domestic violence incident as defined in RCW 10.99.020, and against the peace and  
11 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 MICHAEL ALLEN BOYD 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 27th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being at  
least 36 months older than S.R., have sexual contact (hand/penile in tent) with S.R., who is less than 12  
years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and  
dignity of the State of Washington.

COUNT XIV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse MICHAEL ALLEN BOYD 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 27th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being at  
least 36 months older than S.C., sexual contact (hand/penile in the tent) with S.C., who is less than 12

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1 years old and not married to the defendant, contrary to RCW 9A.44.083, a domestic violence incident as  
2 defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

3  
4 **COUNT XV**

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 MICHAEL ALLEN BOYD 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  
10 difficult to separate proof of one charge from proof of the others, committed as follows:

11 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
12 the 28th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being at  
13 least 36 months older than S.R., have sexual contact (hand/penile as captured in images located on the  
14 defendant's computer 1248.jpg and/or 880.jpg, with S.R., who is less than 12 years old and not married to  
15 the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

16  
17 **COUNT XVI**

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 MICHAEL ALLEN BOYD of the crime of CHILD  
20 MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime  
21 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 28th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being at  
least 36 months older than S.C., have sexual contact (hand/penile as captured in images located on the  
defendant's computer 1247.jpg and/or 879.jpg) with S.C., who is less than 12 years old and not married to  
the defendant, contrary to RCW 9A.44.083, 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 MICHAEL ALLEN BOYD of the crime of 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 scheme or plan,

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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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
4 the 28th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously aid,  
5 invite, employ, authorize, or cause S.R., a minor, to engage in sexually explicit conduct, (as depicted in  
6 the images located on the defendant's computer from day two) knowing that such conduct will be  
7 photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and  
8 dignity of the State of Washington.

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**COUNT XVIII**

8 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
9 authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of SEXUAL  
10 EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
11 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
12 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
13 proof of one charge from proof of the others, committed as follows:

14 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
15 the 28th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being a  
16 parent, legal guardian, or person having custody or control of a minor, permit S.C., a minor, to engage in  
17 sexually explicit conduct, (as depicted in the images located on the defendant's computer from day two)  
18 knowing that the conduct will be photographed or part of a live performance, contrary to RCW  
19 9.68A.040(1)(c), a domestic violence incident as defined in RCW 10.99.020, and against the peace and  
20 dignity of the State of Washington.

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

27 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
28 the 27th day of August, 2004 and the 29th day of August, 2004, did unlawfully and feloniously, being at  
29 least 36 months older than S.R., have sexual contact (hand/vaginal contact) with S.R., who is less than 12

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1 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and  
2 dignity of the State of Washington.

3  
4 **COUNT XX**

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 MICHAEL ALLEN BOYD 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  
10 difficult to separate proof of one charge from proof of the others, committed as follows:

11 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
12 the 1st day of June, 2003 and the 29th day of August, 2004, did unlawfully and feloniously, being at least  
13 36 months older than B.W., have sexual contact (hand/buttocks) with B.W., who is less than 12 years old  
14 and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the  
15 State of Washington.

16  
17 **COUNT XXI**

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 MICHAEL ALLEN BOYD of the crime of SEXUAL  
20 EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
21 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
22 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
23 proof of one charge from proof of the others, committed as follows:

24 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 1st day of June, 2003 and the 29th day of August, 2004, did unlawfully and feloniously aid, invite,  
employ, authorize, or cause B.W., 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  
against the peace and dignity of the State of Washington.

**COUNT XXII**

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse MICHAEL ALLEN BOYD 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

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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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
4 the 1st day of June, 2003 and the 29th day of August, 2004, did unlawfully and feloniously, being at least  
5 36 months older than H.W., have sexual contact (hand/genital first incident) with H.W., who is less than  
6 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and  
7 dignity of the State of Washington.

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COUNT XXIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse MICHAEL ALLEN BOYD 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 1st day of June, 2003 and the 29th day of August, 2004, did unlawfully and feloniously, being at least  
36 months older than H.W., have sexual contact (hand/genital second incident) with H.W., who is less  
than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace  
and dignity of the State of Washington.

COUNT XXIV

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of  
POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—  
WITH SEXUAL MOTIVATION, 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 24th day of March, 2004 and the 2nd day of September, 2004, did unlawfully, feloniously, and  
knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, to wit:  
124.jpg, contrary to RCW 9.68A.070, with sexual motivation as defined by RCW 9.94A.030 and against  
the peace and dignity of the State of Washington.

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COUNT XXV

1  
2 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
3 authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of  
4 POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—  
5 WITH SEXUAL MOTIVATION, 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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
8 the 24th day of March, 2004 and the 2nd day of September, 2004, did unlawfully, feloniously, and  
9 knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, to wit:  
10 137.jpg, contrary to RCW 9.68A.070, with sexual motivation as defined by RCW 9.94A.030 and against  
the peace and dignity of the State of Washington.

COUNT XXVI

11 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
12 authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of  
13 POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—  
14 WITH SEXUAL MOTIVATION, a crime of the same or similar character, and/or a crime based on the  
15 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:

16 That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
17 the 24th day of March, 2004 and the 2nd day of September, 2004, did unlawfully, feloniously, and  
18 knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, to wit:  
19 161.jpg, contrary to RCW 9.68A.070, with sexual motivation as defined by RCW 9.94A.030 and against  
the peace and dignity of the State of Washington.

COUNT XXVII

20  
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 MICHAEL ALLEN BOYD of the crime of  
23 POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—  
24 WITH SEXUAL MOTIVATION, 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,

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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 MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
4 the 24th day of March, 2004 and the 2nd day of September, 2004, did unlawfully, feloniously, and  
5 knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, to wit:  
my047.jpg, contrary to RCW 9.68A.070, with sexual motivation as defined by RCW 9.94A.030 and  
6 against the peace and dignity of the State of Washington.

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**COUNT XXVIII**

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse MICHAEL ALLEN BOYD of the crime of  
**POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT—  
WITH SEXUAL MOTIVATION**, 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:

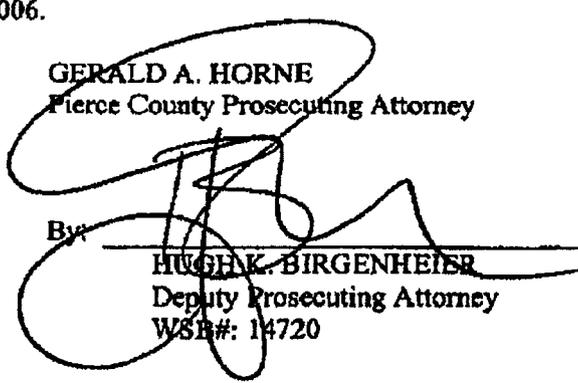
That MICHAEL ALLEN BOYD, in the State of Washington, on or about a time period between  
the 24th day of March, 2004 and the 2nd day of September, 2004, did unlawfully, feloniously, and  
knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, to wit:  
naughtydaughter014.jpg, contrary to RCW 9.68A.070, with sexual motivation as defined by RCW  
9.94A.030 and against the peace and dignity of the State of Washington.

DATED this 25th day of September, 2006.

WILKESON POLICE DEPARTMENT  
WA02720

GERALD A. HORNE  
Pierce County Prosecuting Attorney

hkb

By   
HUGH K. BIRGENHEISER  
Deputy Prosecuting Attorney  
WSR#: 14720

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Office of the Prosecuting Attorney  
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1 NO. 04-1-05178-1  
 2 SUPPLEMENTAL DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

3  
 4 HUGH K. BIRGENHEIER, declares under penalty of perjury:

5 That the Declaration for Determination of Probable Cause dated the 9<sup>th</sup> day of October,  
 6 2004, is by reference incorporated herein;

7 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the  
 8 police report and/or investigation conducted by the WILKESON POLICE DEPARTMENT,  
 9 incident number 04000059 and by Investigator Frank Clark of the Pierce County Prosecutor's  
 10 Office;

11 That the police report and/or investigation provided me the following information;

12 That in Pierce County, Washington, the defendant committed acts of sexual misconduct.

13 Officers of the Wilkeson Police Department learned that the defendant sexually assaulted  
 14 various children the South Prairie area of Pierce County. Because of the lack of resources  
 15 available to the Wilkeson Police Department the Pierce County Prosecutor's Office agreed to  
 16 assist in the investigation. Investigator Frank Clark of the Pierce County Prosecutor's Office  
 17 served as the lead investigator in this case. Investigator Frank Clark is a former police officer  
 18 from the State of California who has investigated computer crime since 1986. Investigator Ken  
 19 Swanson of the Pierce County Prosecutor's Office assisted Investigator Frank Clark. Investigator  
 20 Swanson is a former Seattle Police Officer who has experience in investigating sexual offenses.

21 This declaration will list all of the charged offenses in as close to chronological order as  
 22 possible. Since the defendant often sexually abused more than one child at a time it is impossible  
 23 to know exactly which order these offenses occurred.

24 *Sexual abuse of D.C.*

25 D.C. was the defendant's step-daughter. She is the daughter of the defendant's ex-wife.  
 26 She is currently living in the State of Idaho with her father. She previously lived in and/or visited  
 27 her mother while her mother lived in Pierce County. D.C.'s date of birth is November 15, 1991.  
 28 After it was discovered that the defendant had been sexually assaulting children the Idaho County  
 29 Sheriff's Department was notified of the investigation. Since D.C. lived in the State of Idaho the  
 Idaho County Sheriff was asked to interview D.C.. D.C. was interviewed by Det. Renshaw of the  
 on October 14, 2004. During the interview D.C. made the following disclosures.

During June or July 2002 the defendant had D.C. sit on his lap at her mother's home in  
 South Prairie. D.C. remembers that there was a fireworks display and that she was sitting on his  
 lap. While D.C. was sitting on the defendant's lap, the defendant would point to fireworks and  
 then he would lower his hands and touched her breasts over the clothing. (This is the basis of  
 Count I).

D.C. reports that within a few days of the initial molestation the defendant asked the  
 victim if he could rub lotion of her back. D.C. remembers that this event occurred while her mom  
 was at work. While rubbing lotion of her back the defendant asked D.C. to turn over. When she  
 complied the defendant rubbed her breasts with lotion. This rubbing occurred underneath D.C.'s  
 clothing. (This is the basis of Count II)

30 SUPPLEMENTAL DECLARATION FOR DETERMINATION  
 31 OF PROBABLE CAUSE -1

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1 D.C.'s next memory of being sexually assaulted by the defendant occurred during the  
 2 summer of 2003 when she went to stay with her mom in South Prairie. While D.C. was visiting  
 3 her mom the defendant engaged in what were called "belly rubs" with D.C. and S.C. (S.C. is the  
 4 younger sister of D.C. and is also the step daughter of the defendant). This activity occurred after  
 5 D.C.'s mother left for work. The "belly rubs" would occur while the defendant, D.C. and S.C.  
 6 were on the defendant's bed. During these "belly rubs" the defendant would place his hands  
 7 under D.C.'s clothes and the defendant would rub the victim's stomach and breasts. (The  
 8 touching of the victim's breasts is the basis of Count III) During this time the defendant  
 9 would also touch the victim's vagina placing his finger into her vaginal area. (The touching of  
 10 the victim's vagina is the basis of Count IV).

11 D.C. also reported that the defendant would give her "leg kisses". During this time the  
 12 defendant would touch her vaginal area with his mouth and suck on her vagina. (This is the  
 13 basis of Count V).

14 During this same time the defendant and D.C. engaged in an activity that was called  
 15 "vertical". During "vertical" D.C. would touch the defendant's penis with her hands. D.C.  
 16 demonstrated to the detective how she would move her hands up and down on the defendant's  
 17 penis. D.C. indicated that sperm would come out of the defendant's penis while she was doing  
 18 "vertical". (This is the basis of Count VI)

19 D.C. stated that the defendant would do Belly Rubs, Leg Kisses, and Vertical almost  
 20 every night after her mother left for work. D.C. indicated that this activity never occurred when  
 21 her mother was at home. D.C. remembered that her younger sister (S.C.) was present during  
 22 these sexual assaults but she did not remember the defendant ever sexually assaulting S.C. D.C.  
 23 reported that the defendant video taped her on the bed at least once but she told him she did not  
 24 like that so he did not do it again. D.C. recalled that the last time the defendant sexually assaulted  
 25 her was Christmas vacation 2003.

### 26 *Sexual abuse of S.C.*

27 S.C. was the defendant's stepdaughter and she is the younger sister of D.C. She has lived  
 28 in the South Prairie area during these sexual assaults. Her date of birth is June 14, 1994. After it  
 29 was discovered that the defendant was sexually assaulting children, S.C. moved to the State of  
 30 Idaho to live with her father. Prior to moving to Idaho S.C. was interviewed by the Pierce County  
 31 Prosecutor's Office. At that time S.C. did not make a disclosure about being sexually abused by  
 32 the defendant.

33 On October 28, 2004 S.C. was interviewed by Detective Renshaw of the Idaho County  
 34 Sheriff's Department. S.C. verified that D.C. did come to South Prairie to visit while she was  
 35 living with her mother. S.C. was then asked about anyone touching her private parts. S.C. stated  
 36 that the defendant had touched her private parts.

37 During the interview S.C. made the following disclosures. S.C. stated that the defendant  
 38 had touched her between her legs with his hand and that at the time she did not have any  
 39 underpants on. S.C. stated that this occurred while her mother was at work and she remembered  
 40 that this occurred during the summer time when D.C. was visiting from Idaho. (This is the basis  
 41 of Count VII)

42 The detective asked the victim about an earlier time when she denied being touched by  
 43 the defendant and she indicated that she said she was not touched because she was scared that the  
 44 defendant would find out and be mad at her. S.C. revealed that D.C. had previously disclosed  
 45 that the defendant was sexually abusing her and their mother did not believe D.C. S.C. feared  
 46 that her mother would not believe her if she reported the defendant was sexually abusing her.

47 S.C. also revealed that the defendant would walk around the house without clothes on and  
 48 that she had seen him naked while he was in the bedroom with her. S.C. also revealed that she  
 49 was not sure what to call the defendant's private area but she had heard it called a "dick". S.C.

SUPPLEMENTAL DECLARATION FOR DETERMINATION  
 OF PROBABLE CAUSE -2

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

04-1-05178-1

1 disclosed that the defendant would have S.C. sit on his lap and he would have S.C. touch his  
2 "dick" with her hand. S.C. remembered that the defendant's "dick" would be hard. (This is the  
3 basis of Count VIII).

4 ***Initial sexual exploitation of D.C. and S.C.***

5 S.C. also disclosed that the defendant would take pictures of her and D.C. when they did  
6 not have clothes on. S.C. described how they would sit on the floor, couch or chairs with their  
7 legs spread apart. S.C. recalled that the defendant told her and D.C. not to tell anyone about him  
8 taking pictures of them or the fact that he was sexually abusing them. (This is the basis of  
9 Counts IX and X) The State of Washington has been unable to locate the images that the  
10 defendant took showing D.C. and S.C. engaged in sexually explicit conduct in 2002 or 2003.  
11 Because the defendant deleted files from his computer when he learned that law enforcement was  
12 investigating the images may have been lost.

13 ***Sexual abuse and exploitation of S.R. and S.C.***

14 S.R. was a friend of S.C. and lived in the South Prairie area. Her date of birth is July 3,  
15 1994. In August 2004 S.R. revealed that she had been sexually assaulted by the defendant. On  
16 September 16, 2004 S.R. was interviewed by Kari Arnold-Harms of the Pierce County  
17 Prosecutor's Office. During this interview S.R. made the following disclosures.

18 When she was spending the night at the defendant's house the defendant gave her alcohol  
19 to drink. S.R. was able to give the interviewer details regarding the alcohol that the defendant  
20 provided to S.R. and S.C. The defendant also had S.R. and S.C. pretend to perform oral sex on  
21 hot dogs. Images have been recovered from the defendant's computer show what appears to be  
22 these minors with hot dogs in their mouths. An example of this is located at 1240.jpg, 1297.jpg,  
23 1298.jpg and 2252.jpg.

24 Also recovered from the defendant's computer were images that show both S.C. and S.R.  
25 engaged in sexually explicit conduct. The images are a series and were taken beginning at 8:18  
26 a.m. and ending at 10:23 a.m. During this time the defendant multiple images of S.R. and S.C.  
27 (believed to be August 27, 2004). Many of these images show S.R. and/or S.C. engaged in  
28 sexually explicit conduct. An example of these images is found at 168.jpg, 1292.jpg, 193.jpg,  
29 585.jpg, 1107.jpg, 1110.jpg and 1214.jpg. (This is the basis of counts XI and XII). During the  
afternoon the defendant took more images of S.R. The next group of images were taken in the  
afternoon show S.R. on the telephone.

During the weekend of August 27-29, 2004, S.R. and S.C. slept in the tent at the  
defendant's house. (This is also the house were S.C. lived) During the night the defendant came  
into the tent. While in the tent the defendant had S.R. touch his penis. (This is the basis of  
count XIII) S.R. also reported that the defendant made S.C touch his private area. (This is the  
basis of count XIV)

A subsequent search of the defendant's computer revealed numerous images of both S.R.  
and S.C. engaged in sexually explicit conduct. The camera used by the defendant to take these  
images records the date and time that the image was captured. The images recovered during this  
investigation indicate that the images were captured on February 18 and 19, 2003. It is believed  
that the date feature on the defendant's camera was not set correctly and that these images were  
taken during the weekend of August 27-29, 2004.

The images show both S.R. and S.C. engaged in various acts of sexually explicit conduct.  
One of these images shows S.R. touching the defendant's penis. Another image shows S.C.  
touching the defendant's penis. These images appear to be taken in the defendant's house. (This  
is the basis of counts XV and XVI) Based on the information that was recorded when the

SUPPLEMENTAL DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -3

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04-1-05178-1

1 images were captured these images were taken the day after the images charged in count XI and  
2 XII.

3 On the same day that the defendant had S.R. and S.C. touch his penis in the house the  
4 defendant took additional images of S.C. and S.R. engaged in sexually explicit conduct. This  
5 group of images begins at 8:45 a.m. and end at 10:23 a.m. During this time the defendant took  
6 multiple images of S.R. and S.C. engaged in sexually explicit conduct. An example of these  
7 images is found at 1.jpg, 395.jpg, 599.jpg, 667.jpg, 811.jpg and 821.jpg. (This is the basis of  
8 counts XVII and XVIII)

9 During her interview S.R. reported that the defendant took pictures of the vaginal areas of  
10 both S.R. and S.C. The sexual exploitation of S.R. took place after the defendant's wife left for  
11 work. The defendant had both S.R. and S.C. take pictures of each other. The defendant would  
12 appear in the picture with S.R. while S.C. took the picture. The defendant would then appear in  
13 the picture with S.C. and S.R. would take the picture.

14 S.R. indicated that the defendant took more than one sexually explicit picture of her. S.R.  
15 gave specific details of how the defendant posed her for these sexually explicit pictures. S.R.  
16 described how the defendant would take his index finger and open S.C.'s vaginal opening and  
17 then take a picture of S.C.'s vagina.

18 After S.C. and S.R. were sexually assaulted and exploited by the defendant they (the  
19 defendant, S.R. and S.C.) all "pinky swore" that they would not tell anyone.

20 S.R. then disclosed that although the defendant did not open up her vagina like he did to  
21 S.C., he did rub her private area. S.R. indicated the defendant rubbed her private area with his  
22 hand. This was accomplished by the defendant putting his hands down S.R.'s pants and  
23 underwear. (This is the basis of Count XIX) The defendant also told S.R. how to make  
24 sperm.

#### 25 *Sexual abuse and exploitation of B.H.*

26 In November 2004 another victim of the defendant's sexual abuse came forward. B.H.  
27 was a friend of S.C. Her date of birth is July 25, 1994. She was 10 years old when the defendant  
28 sexually assaulted her. On November 5, 2004 B.H. was interviewed by a child interviewer with  
29 the Pierce County Prosecutor's Office. During the interview described how the defendant  
30 grabbed her butt with his hand while she was at the defendant's house. B.H. indicated that the  
31 grabbing was over the clothes and she described the grabbing by stating, "He did it like a  
32 boyfriend girlfriend would do". B.H. indicated that the defendant grabbed her butt more then one  
33 time. (This is the basis of Count XX) B.H. also disclosed that the defendant would walk around  
34 the house in his underwear and she had seen his penis. B.H. indicated that she saw the  
35 defendant's penis on two occasions.

36 B.H. also disclosed that the defendant would take pictures of her. B.H. told the  
37 interviewer that the defendant would take pictures of purpose of her butt and other spots. This  
38 would occur when the defendant's wife was at work. B.H. described how the defendant would  
39 pull her underwear down really fast and take a picture. B.H. stated the defendant took more than  
40 one picture. At one point B.W. stated, "I'd lay on my back and he'd pull up my dress and take  
41 pictures of the upper part." She also disclosed that the defendant took pictures of, "My butt and  
42 my middle part". (This is the basis of Count XXI) The defendant sometimes showed B.H. and  
43 S.C. the sexually explicit pictures he had taken. The defendant told B.H. not to tell anyone.

#### 44 *Sexual abuse of H.W.*

45 Also in November 2004 another victim of the defendant's sexual abuse came forward.  
46 H.W. is the cousin of B.H. Her date of birth is September 8, 1996. On November 8, 2004 H.W.  
47 was interviewed by a child interviewer of the Pierce County Prosecutor's Office. Prior to  
48

49 SUPPLEMENTAL DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -4

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04-1-05178-1

1 interviewing H.W. the interviewer spoke to H.W.'s mother and grandmother. H.W.'s mother  
2 reported that the H.W. had disclosed to her that the defendant grabbed H.W.'s hand and stuck her  
3 down his pants and that her hand was there for awhile. H.W.'s mother reported that H.W. made a  
4 hand motion showing how her hand went into the defendant's pants.

5 H.W.'s mother stated she started noticing changes in H.W. during the summer of 2004.  
6 During this time H.W. became moody and indicated that she hated her life. H.W. began to have  
7 nightmares and she did not want to sleep by herself. At one point H.W. told her mother that she  
8 thought she (H.W.) was pregnant.

9 During the interview H.W. state that she had stayed the night at the defendant's house.  
10 While at the defendant's house the defendant had H.W. touch his genital area through the  
11 defendant's clothes on two occasions. H.W. disclosed that the defendant took her hand and placed  
12 in on his jeans over the area where his penis was. H.W. stated that she tried to remove her hand  
13 from the place the defendant had put her hand but the defendant would not let her. H.W. stated  
14 that no one could see what the defendant was doing because they (H.W. and the defendant) were  
15 covered with a blanket. H.W. was able to give details regarding these sexual assaults. (This is  
16 the basis of Counts XXII and XXIII)

17 **Possession of child porn**

18 A search of the defendant's computer revealed numerous commercial images of minors  
19 engaged in sexually explicit conduct. Also located on the defendant's computer were images of  
20 S.C. and S.R. engaged in sexually explicit conduct.

21 Image124.jpg depicts a young girl sitting on a red towel. The girl is naked and her  
22 vagina is visible in the image. The child does not have pubic hair. (This is the basis of Count  
23 XXIV).

24 Image 137.jpg depicts a young girl "squatting" over a toilet. The young girl is naked and  
25 she is urinating into the toilet. The young girl's vagina is visible. The child does not have pubic  
26 hair. (This is the basis of Count XXV)

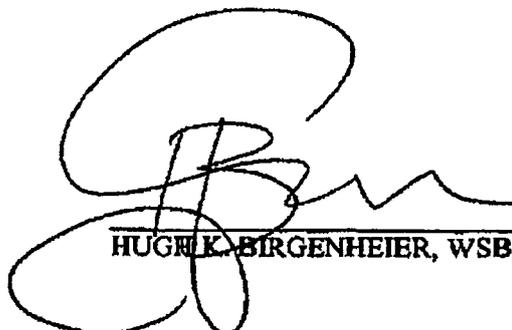
27 Image 161.jpg depicts and adult male raping a young child. The adult male is inserting  
28 his penis into the child's vagina. Both the adult and the child appear to be naked. The child does  
29 not have pubic hair. (This is the basis of Count XXVI)

Image my047.jpg depicts a young girl. Other then shoes the young girl is naked and her  
vagina is exposed. The young girl does not have pubic hair. (This is the basis of Count XXXII)

Image naughtydaughter014.jpg depicts a young girl. The young girl is naked and her  
vagina is exposed. The young girl does not have any pubic hair. (This is the basis of Count  
XXXIII).

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

DATED: September 25, 2006  
PLACE: TACOMA, WA

  
HUGO K. BIRGENHEIER, WSB# 14720

SUPPLEMENTAL DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -5

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

## APPENDIX E



04-1-05178-1 26294301 CP 10-11-06

04-FILED 178-1  
IN COUNTY CLERK'S OFFICE

A.M. OCT 11 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

October 10, 2006

Hugh Birgenheier, DPA  
PCPAO  
930 Tacoma Ave. S., Room 948  
Tacoma, WA 98402

Re: State v. Michael Boyd

Dear Mr. Birgenheier:

This letter confirms that you today informed the court that you would make the photos and discovery materials available "anytime" and then tentatively agreed that we could look at them this Saturday and Sunday (October 14-15). You then almost immediately changed your mind and denied us access to the materials this weekend. You stated that the materials would not be ready for our review (although you also told the court earlier today that we could have reviewed the materials at any time in the months prior to this date and in fact repeatedly cast criticism on our failure to do so). As it is, we have no definite dates and times.

I am not available on Saturday mornings October 21, 28 and November 4 due to previously scheduled (and paid for) commitments.

However, please reserve those Saturdays starting at 1 p.m. to midnight, and then the Sundays from 9 a.m. to 9 p.m. Obviously we will be as efficient as possible with our time since we simply want to thoroughly prepare for trial. Due to my trial schedule both in this county and the other jurisdictions where I practice, I simply do not have week days to devote to this review.

We will be reviewing those materials first, as a survey by the defense team without our client, then with our client, and then again for preparation of specific trial matters. Because you have received the control over the items that you sought, please make arrangements with the Pierce County Jail so that we can bring the materials to view with our client when we deem it appropriate.

I note also that you could not prepare the order for the motion in which you prevailed because you averred that you need to prepare for a trial tomorrow and that you did not have enough time to comply with the court's order.

Very truly yours,

  
Barbara Corey  
Attorney for Michael Boyd

COPY

Cc: defense investigator; client; superior court file

901 South "I" Street, #201, Tacoma, WA 98405  
Phone: 253.779.0844 ~ Fax: 253.779.0846 ~ e-Mail: bcorey9@net-venture.com



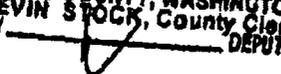
04-1-05178-1 26328543 CP 10-18-06

October 16, 2006

Hugh Birgenheier, DPA  
PCPAO  
930 Tacoma Ave. S., Room 946  
Tacoma, WA 98402

FILED  
IN COUNTY CLERK'S OFFICE

A.M. OCT 17 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTYRe: State v. Michael Boyd, No. 04-1-05178-1

Dear Mr. Birgenheier:

I am confused about the purpose of your letter dated October 12, 2006. And I suggest that my confusion is at least partly attributable to your confusion regarding the defense discovery requests.

You will recall that when you first discussed amending the information in this case, you limited your remarks initially to adding counts showing the alleged victims in sexually explicit conduct. We stated early on that we wanted those pictures for our own defense preparations and you declined to provide them. Although we did talk about how the defense might review the photos to prepare for trial, we were never able to agree on a procedure. In addition, because there was discussion about the possibility of a resolution to the case, the matter lacked the urgency that presently exists.

Several months ago, I informed you that we want a mirror image of the hard drive, something that our experts tell us is essential to their case work. You have steadfastly maintained that any mirror image of the hard drive can only be viewed on your computer, apparently with your software. Thus, you have declined to provide that discovery as well.

We certainly disagree on how discovery is to be accomplished in this case. From my perspective, the rules are very clear that the State has the obligation to provide such materials as the photographs in this case. As you know, we would ordinarily seek production of the photos from the agency with custody of them (as in medical examiner, or sheriff's office). And since your office is both the investigating authority and the prosecuting entity we seek discovery from your office. (Parenthetically, I note that you told me that your office apparently no longer has physical control over the evidence items and that it was left in, of all places, the Wilkinson Police Department evidence room.)

COPY

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Boyd letter -10/16/2006 - page 2

It is true that you offered a month or so ago to make a mirror image of the hard drive. You stated at that time that we would be allowed to view the mirror image on our own computers. You then almost immediately retracted that offer. We decided that it was premature to request the mirror image at that time. Although we will want to have the mirror image of the hard-drive, our expert wants to examine it with some computer software that you do not have. I do not know how that issue can be resolved, since the defense is not going to pay to install an expensive computer program on the State's equipment.

Although Mr. Clark stated in court after the recent hearing that it would take 1-2 hours to make the mirror image of the hard drive, he then reportedly told you that it would take a couple of days, since he does not have immediate access to the item.

Your offer to allow the defendant to view the evidence under restrictive conditions is not acceptable at this time and further does not comport with the court's order (with which I disagree) for the following reasons.

(1) You seem to think that two viewings of the materials will be sufficient for us to prepare for trial. I believe that Judge Larkin stated that we would have "at least" two opportunities to look at the evidence. We certainly will need more than two opportunities. We will need to make a comprehensive review of the materials with the investigator and expert, and then make a comprehensive review of the materials with the client. We will then need to select the photographs that we want to use for our in-person interviews of the alleged victims and other witnesses. We then will need the photos for those interviews. We also will need access to the photos for the drafting of motions and questions for the examination of witnesses during trial. Your offer of two days of viewing is insufficient.

(2) Although I am not required to disclose our expert prior to trial (and I very much resent having to do so), I am informing you that our expert is Randall Karstetter. At our request and as he has done in many similar cases in this state, he will examine the materials with "Forensic Tool Kit", a program that is a direct competitor of "Encase", the program used by Frank Clark. Mr. Karstetter regularly examines at his lab evidence such as is at issue in this case. He has never had any problems with security. No jurisdiction other than Pierce County appears to take the unreasonable and untenable position that defendants are not allowed to possess for the sole purpose of trial preparation the photographic evidence which the State alleges forms the basis of criminal charges.

