

APPENDIX A

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

STATE OF WASHINGTON,)	No. 75279-1-I
)	
Respondent,)	
)	
v.)	
)	
JONATHAN SAMUEL SAGE,)	PUBLISHED OPINION
)	
Appellant.)	FILED: December 18, 2017

VERELLEN, C.J. — Jonathan Sage was convicted of four counts of second degree rape of a child. The trial court did not instruct the jury that it must find each count required a “separate and distinct” act. But because the State clearly elected separate acts for each count in closing argument, testimony supported those separate acts, and the court gave a unanimity instruction, it was manifestly apparent to the jury that the State was not seeking multiple punishments against Sage for the same act. There was no double jeopardy violation.

Sage’s challenge to the admission of “other bad acts” evidence fails because the court performed a detailed ER 404(b) analysis and properly concluded the evidence of other bad acts was relevant to the charges.

One victim glared at Sage as he entered the courtroom, and the trial court properly instructed the jury to disregard the behavior. Sage does not establish prejudice, and the trial court did not err when it denied Sage's motion for mistrial.

The State concedes the community custody conditions restricting Sage's daily travel, prohibiting him from possessing drug paraphernalia, prohibiting Internet access, and requiring him to participate in substance abuse treatment are unconstitutionally vague or insufficiently crime related and thus should be stricken. We agree.

After the jury entered special verdict forms unanimously finding the alleged aggravating circumstances were established beyond a reasonable doubt, the trial court concluded those aggravating circumstances were a substantial and compelling reason for imposing an exceptional sentence. Because the judge has no fact-finding role, the sentencing judge was not required to enter any additional findings of fact or conclusions of law.

Therefore, we affirm the conviction and remand with instructions to strike the disputed community custody conditions.

FACTS

Between 2011 and 2014, Jonathan Sage engaged in sexual acts with J.M. and E.M.¹ Sage came into contact with the two brothers because he owned a company at which J.M. and E.M.'s mother worked.

¹ Because the victims in this case were minors, they will be identified by their initials.

Sage took the mother and her two sons into his home after the mother and her husband divorced. They lived with Sage for a few months when the boys were eight and nine years old, and again in 2010. When Sage moved to a home on Cattail Lane in Langley, Washington, the mother, J.M., and E.M. moved into their own home on Whidbey Island. Sage continued his relationship with J.M. and E.M., including hikes and dinners. Sage bought food and clothing for them and took them to doctor's appointments.

In 2011, after J.M. started seventh grade, he and Sage started spending more time together. Around that same time, E.M. began spending more time at Sage's house than at his mother's house. When E.M. was around 11 years old, he often slept over at Sage's house, and Sage would take him to school. E.M. said that by age 12, he and Sage began to drink alcohol together. During that time, E.M. would drink "almost every night."²

E.M. testified about his first sexual encounter with Sage at the Cattail Lane house. E.M. was "more inebriated than usual," and he and Sage were watching pornography together.³ E.M. and Sage touched each other and then went into Sage's bedroom, where Sage had sexual intercourse with him. The first encounter with E.M. happened when he was 12 years old, toward the end of his sixth grade school year. E.M. said after that first time "it was fairly frequent, but I

² Report of Proceedings (RP) (Apr. 7, 2016) at 600.

³ RP (Apr. 7, 2016) at 606.

can't remember specifically."⁴ E.M. testified, "Alcohol had to be involved really in order to [] get me to comply with it, I guess you could say."⁵ "[I]n most cases," the sexual encounters between E.M. and Sage involved E.M. sexually touching Sage's dog.⁶ Sage instigated those contacts with the dog. E.M. testified that Sage made videos of some of their sex acts, recording them on E.M.'s phone and on Sage's digital camera. The videos would end up on Sage's laptop computer.

By the time J.M. was in seventh grade, he started staying at the Cattail Lane house more often. J.M. testified that around that time, he had sexual intercourse with Sage for the first time. One evening, J.M. saw E.M. drinking alcohol, and J.M. said he also wanted some. It was the first time J.M. had consumed alcohol, and a single drink made him "drunk."⁷ Later in the evening, J.M. and Sage went into Sage's home office, where J.M. discussed issues he was having "fitting in" at school.⁸ That discussion led to Sage having sexual intercourse with J.M.

Days later, J.M. and Sage had intercourse again. J.M. testified that for the next year, he and Sage had intercourse "a few days a week."⁹ During that time, at

⁴ RP (Apr. 7, 2016) at 610.

⁵ RP (Apr. 7, 2016) at 611.

⁶ RP (Apr. 7, 2016) at 614.

⁷ RP (Apr. 6, 2016) at 372.

⁸ RP (Apr. 6, 2016) at 374.

⁹ RP (Apr. 6, 2016) at 390.

the Cattail Lane house, J.M. walked in while Sage was having intercourse with E.M. when E.M. was 12 years old.

For most of the 2012-13 school year, Sage lived on Bercot Road in Freeland, Washington with the mother, J.M., and E.M. J.M. was in ninth grade that year, and he testified that he continued to have intercourse with Sage. E.M., who was in eighth grade, testified that he and Sage regularly had intercourse.

Next, Sage moved to a house on Coles Road, where he continued to have intercourse with J.M. and E.M. J.M. also walked in on E.M. and Sage having intercourse at the Coles Road house. E.M. said that when he first started to resist intercourse with Sage, "he would get angry at that."¹⁰

E.M. testified that during the later period of abuse, he became unhappy.

At that point, I wouldn't say I was happy. I mean, at that time I started to contemplate suicide more. There was a Smith and Wesson M&P 9, 9 millimeter polymer framed pistol, and there was a very loose lock on it. It's a very tall lock, and I could open the case while the lock was still on it and reach in and pull out the handgun, and the ammunition was there, too. So I knew at any time I could kill myself and I could take him with me, but I decided against it because I was thinking of my own family, biological family.^[11]

The father of J.M. and E.M. had limited interaction with Sage and "thought everything was all good and well."¹² In the summer of 2014, the mother asked the father to take custody of J.M. and E.M. because she was being evicted from her home.

¹⁰ RP (Apr. 8, 2016) at 650.

¹¹ RP (Apr. 8, 2016) at 652.

¹² RP (Apr. 7, 2016) at 506.

E.M. and J.M. moved into their father's home. He allowed J.M. and E.M. to continue visiting Sage and allowed E.M. to occasionally spend weekends with him. The father felt Sage was a good mentor and role model for J.M. and E.M.

On December 5, 2014, Sage picked up E.M. from the father's house for a sleepover. That evening, J.M. told his father about the sexual conduct with Sage. The father testified that he decided not to call Sage or drive to Whidbey to retrieve E.M. that evening. He explained, "I didn't think it would be smart to call the police and have them either [] pull him over in a traffic stop or come to his house. I knew he owned a firearm and I thought it may result in a hostage situation."¹³

When confronted, Sage justified the sexual abuse, telling the father "people had been doing this for a long time" and it was "strange that it's looked down upon as far as a relationship between a man and a boy."¹⁴ Sage told the father, "You could call the police and have me arrested. But that wouldn't do anyone any good, and a lot of people would lose their jobs."¹⁵

The State charged Sage with four counts of rape of a child in the second degree. Counts 1 and 2 each alleged that Sage raped J.M. between September 1, 2011 and June 30, 2012. Each count included allegations of two aggravating circumstances that would justify an exceptional sentence under RCW 9.94A.535(3)(g) and RCW 9.94A.535(3)(n).

¹³ RP (Apr. 7, 2016) at 517.

¹⁴ RP (Apr. 7, 2016) at 521-22.

¹⁵ RP (Apr. 7, 2016) at 521.

Counts 3 and 4 each alleged Sage raped E.M. between December 19, 2011 and December 19, 2012. Those counts included the same aggravating factors as counts 1 and 2 and that Sage “knew that the victim of the current offense was a youth who was not residing with a legal custodian and the Defendant established or promoted the relationship for the primary purpose of victimization, contrary to RCW 9.94A.535(3)(j).”¹⁶

The court gave separate to convict instructions for each count. After each to convict instruction, the court gave a corresponding unanimity instruction requiring that “one particular act” of the charged crime must be proven for each count.¹⁷

The jury was also instructed “A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.”¹⁸ But the jury was not instructed that each count required a separate and distinct act.

The jury convicted Sage on all four counts and, by special verdict, found the alleged aggravating circumstances had been established. The court concluded the aggravating circumstances were substantial and compelling reasons to impose an exceptional sentence under RCW 9.94A.535.

Sage appeals his conviction and his exceptional sentence.

¹⁶ Clerk’s Papers (CP) at 86.

¹⁷ CP at 54, 56, 58, 60.

¹⁸ CP at 45.

ANALYSIS

Double Jeopardy

Sage contends the jury instructions violated his right to be free from double jeopardy because they exposed him to multiple punishments for the same offense.

We review a double jeopardy claim de novo, and it may be raised for the first time on appeal.¹⁹ The constitutional guarantee against double jeopardy protects a defendant against multiple punishments for the same offense.²⁰ We “may consider insufficient instructions ‘in light of the full record’ to determine if the instructions ‘actually effected a double jeopardy error.’”²¹

Where multiple counts charge the same crime against the same victim occurring during the same time period, juries should be instructed that each count requires proof of a separate and distinct act.²² But the absence of a separate and distinct act instruction is not fatal; it only creates the *potential* for a double jeopardy violation.²³

There is no double jeopardy violation where the information, instructions, testimony, and argument make it “‘manifestly apparent’” to the jury that the “‘State

¹⁹ State v. Land, 172 Wn. App. 593, 598, 295 P.3d 782 (2013).

²⁰ Id. (citing U.S. CONST. amend. V; WASH. CONST. art. I, § 9; State v. Mutch, 171 Wn.2d 646, 661, 254 P.3d 803 (2011)).

²¹ State v. Pena Fuentes, 179 Wn.2d 808, 824, 318 P.3d 257 (2014) (quoting Mutch, 171 Wn.2d at 664).

²² Mutch, 171 Wn.2d at 663.

²³ Id.

[was] not seeking to impose multiple punishments for the same offense.”²⁴ “A defendant charged with multiple counts is adequately protected from any risk of double jeopardy when the evidence is sufficiently specific as to each of the acts charged.”²⁵ Courts have also looked to whether the jury was instructed that it must be unanimous on each count and whether “different evidence is introduced to support each count.”²⁶ Courts have acknowledged that a single instruction encompassing multiple counts rather than separate to convict instructions for each count can compound double jeopardy concerns.²⁷

Sage contends it was not manifestly apparent that his conviction was based on separate and distinct acts.²⁸

Here, the sexual acts occurred at three different houses, sometimes many times per week. J.M. testified in detail about the first time he had intercourse with Sage in the office of the Cattail Lane house. J.M. was almost 13 years old.²⁹ J.M. testified the second time they had sexual intercourse was in the garage of the

²⁴ Id. (alteration in original) (quoting State v. Berg, 147 Wn. App. 923, 931, 198 P.3d 529 (2008)).

²⁵ State v. Hayes, 81 Wn. App. 425, 439, 914 P.2d 788 (1996).

²⁶ Id. at 439-40.

²⁷ State v. Borsheim, 140 Wn. App. 357, 368, 165 P.3d 417 (2007).

²⁸ See Mutch, 171 Wn.2d at 665 (“Mutch’s case presents a rare circumstance where, despite deficient jury instructions, it is nevertheless manifestly apparent that the jury found him guilty of five separate acts of rape to support five separate convictions.”).

²⁹ J.M. said he could remember his exact age because he was “looking forward to [his] birthday.” RP (Apr. 6, 2016) at 385.

same house several days later. J.M. also described having intercourse with Sage in the living room, Sage's bedroom, and his truck.

In closing argument, the State identified count 1 and walked the jury through the evidence presented at trial:

And Count 1 is focusing on [J.M.]'s first sexual intercourse with Jonathan Sage. And what did you hear about that from [J.M.]? You heard [J.M.] describe how he was having trouble at school. He was emotional. He saw [E.M.] and the defendant drinking. He drank. He became emotional. The defendant was there to console him. They went in the office. They hugged. Things happened in the chair. They went to the floor. And [J.M.] described how Jonathan Sage, the defendant, had anal intercourse with [J.M.] . . . That was the first time he had ever had sex. He said he lost his virginity then. That's Count 1. That's what I want you to consider to be Count 1.³⁰

The State then discussed count 2, describing it as the same elements, same actors, but a distinct event:

[J.M.] said the second time was roughly a week later, about that much time, in the defendant's finished heated garage, kind of like a room but it was a garage. He talked about that. They again had . . . intercourse in that garage. Again, he was drinking.³¹

E.M. also testified about his first time having sexual intercourse with Sage at the Cattail Lane house. E.M. described how he and Sage were watching pornography together, which led to Sage having intercourse with E.M. E.M. testified the first time stood out in his mind and it was "fairly frequent" after that.³²

³⁰ RP (Apr. 8, 2016) at 753 (emphasis added).

³¹ RP (Apr. 8, 2016) at 754.

³² "I'd say weekly." RP (Apr. 7, 2016) at 610.

E.M. described incidents where sexual contact with Sage's dog was initiated as a prelude to the sexual intercourse with E.M. E.M. said he also had intercourse with Sage at the Coles Road and Bercot Road houses.

In closing argument, the State discussed counts 3 and 4 and referred to E.M.'s testimony, emphasizing details of his first time having sex with Sage: "At age 12, [E.M.] describes that the first time they ever had sexual contact or intercourse with each other they were sitting on the futon. Mr. Sage suggest[ed] they watch some pornography together."³³ And for count 4, the State noted: "And count IV is again [E.M.]. [E.M.] described that they had sex often in the beginning *after it first started*. Sometimes multiple times a week but at least every week."³⁴

Sage counters that J.M. and E.M. had "fuzzy memories" and gave "ambiguous evidence" about the timing and detail of the encounters.³⁵ But the State presented different evidence to support each count and walked the jury through that evidence in closing: count 1, J.M.'s first encounter in the office, count 2, J.M.'s encounter one week later in the heated garage, and count 3, E.M.'s first encounter on the futon. Even if E.M. vaguely described his subsequent sexual encounters with Sage, none could be confused with E.M.'s first encounter. As argued by the State in closing, E.M.'s first encounter on the futon, count 3, was necessarily separate and distinct from any of his subsequent encounters "after it

³³ RP (Apr. 8, 2016) at 759.

³⁴ RP (Apr. 8, 2016) at 755-56 (emphasis added).

³⁵ Appellant's Br. at 15.

first started”³⁶ which the jury may have relied on to support count 4.

After each elements instruction, the court instructed:

The State of Washington alleges that the defendant committed acts of Rape of a Child in the Second Degree on multiple occasions. To convict the defendant on Count [I, II, III, IV] of Rape of a Child in the Second Degree, one particular act of Rape of a Child in the Second Degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of Rape of a Child in the Second Degree.^[37]

The trial court did not give a separate and distinct act instruction, but it did instruct the jury to decide each count separately: “A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.”³⁸

In view of the prosecutor’s election of separate and distinct events in closing, the victim’s supporting testimony, the unanimity instructions given, together with separate to convict instructions for each count and the separate consideration instruction, we conclude it was manifestly apparent to the jury that the State was not seeking multiple convictions based on a single act. Sage does not establish a double jeopardy violation.

³⁶ RP (Apr. 8, 2016) at 755-56.

³⁷ CP at 54, 56, 58, 60.

³⁸ CP at 45; see Hayes, 81 Wn. App. at 439-40 (reasoning that the lack of a “separate and distinct” act instruction is not dispositive, “so long as the jury is instructed as to the unanimity requirement on each count and different evidence is introduced to support each count.”); see Mutch, 171 Wn.2d at 663 (noting that a unanimity instruction helps to protect against a double jeopardy violation if it informs the jury that at least one particular act must be proved beyond a reasonable doubt for each count).

Evidentiary Challenges

(i) Uncharged Conduct

Sage contends the court improperly admitted allegations of uncharged acts, including uncharged acts occurring after the charging periods.

Before trial, the State moved to admit uncharged incidents of sexual behavior under ER 404(b). The State also moved to admit evidence that Sage and E.M. had sexual contact with Sage's dog.

We review the trial court's interpretation of ER 404(b) de novo as a matter of law.³⁹ If the trial court interprets ER 404(b) correctly, we review the ruling to admit or exclude evidence of misconduct for an abuse of discretion.⁴⁰ "A trial court abuses its discretion where it fails to abide by the rule's requirements."⁴¹

"ER 404(b) is a categorical bar to admission of evidence for the purpose of proving a person's character and showing that the person acted in conformity with that character."⁴²

The trial court must

"(1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect."^[43]

³⁹ State v. Fisher, 165 Wn.2d 727, 745, 202 P.3d 937 (2009).

⁴⁰ Id.

⁴¹ Id.

⁴² State v. Gresham, 173 Wn.2d 405, 420, 269 P.3d 207 (2012).

⁴³ Id. at 421 (quoting State v. Vy Thang, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002)).

One proper purpose for admission of evidence of prior misconduct is to show a common scheme or plan.⁴⁴

There are two instances in which evidence is admissible to prove a common scheme or plan: (1) "where several crimes constitute constituent parts of a plan in which each crime is but a piece of the larger plan" and (2) where "an individual devises a plan and uses it repeatedly to perpetrate separate but very similar crimes."^{45]}

Here, the trial court found by a preponderance of the evidence the misconduct in the form of sexual acts beyond the charging period actually occurred, identified the purpose of admitting the evidence, determined the relevance of the evidence to prove an element of the crime, and weighed its probative value against its prejudicial effect. Specifically, the court found the evidence to be "highly probative" because it went to "the heart of the nature of the State's case."⁴⁶ The court noted the jury would not likely "give undue prejudicial effect to this evidence."⁴⁷

Sage also argues the trial court erred when it allowed testimony about the uncharged sexual activities with his dog. But the court acknowledged the potential for prejudice and admitted the evidence with specific limitations: "I first will exclude any evidence concerning the defendant having sexual contact with the dog *that did not occur in the context of the defendant also having sexual contact*

⁴⁴ Id.

⁴⁵ Id. at 421-22 (quoting State v. Lough, 125 Wn.2d 847, 854-55, 889 P.2d 487 (1995)).

⁴⁶ RP (Apr. 5, 2016) at 26.

⁴⁷ RP (Apr. 5, 2016) at 27.

with [E.M.J].”⁴⁸ The court found by a preponderance of the evidence that the sexual contact with the dog did occur. The court concluded the limited evidence was admissible under the res gestae exception because it occurred in the immediate time frame of the instances of sexual abuse and it could also be characterized as part of the common plan, or grooming process,⁴⁹ and desensitizing E.M. to sexual acts.⁵⁰

We conclude the trial court correctly applied ER 404(b), and its ruling to admit the evidence of misconduct was not an abuse of discretion.

(ii) *E.M.’s Marijuana and Gun Evidence*

Sage also contends he was denied the right to impeach his accuser when the trial court granted the State’s motion to preclude evidence of E.M.’s marijuana use and access to firearms at his father’s house. Sage suggests this evidence would rebut any implication that Sage introduced E.M. to illicit substances and guns. But E.M.’s exposure to those items at his father’s house does not make a

⁴⁸ RP (Apr. 5, 2016) at 27 (emphasis added).

⁴⁹ State v. Quigg, 72 Wn. App. 828, 833, 866 P.2d 655 (1994) (grooming is “a process by which child molesters gradually introduce their victims to more and more explicit sexual conduct.”).

⁵⁰ RP (Apr. 5, 2016) at 30-31; see State v. DeVincentis, 150 Wn.2d 11, 22, 74 P.3d 119 (2003) (evidence admitted under common scheme or plan exception included evidence that defendant walked around his house in front of preteen victims wearing nothing but “bikini or g-string underwear . . . to reduce the children’s natural discomfort or negative reaction”); see State v. Krause, 82 Wn. App. 688, 697, 919 P.2d 123 (1996) (evidence of prior uncharged sex abuse of young boys was admissible to show a common scheme or plan to molest young boys).

material element of the crime more or less probable.⁵¹ Neither do they call E.M.'s credibility into question.

Sage suggests his right to confrontation is also implicated. But he waived any confrontation clause arguments by failing to raise them in the trial court. In State v. O'Cain,⁵² this court held confrontation clause objections must be raised in the trial court, as confirmed in Melendez-Diaz v. Massachusetts.⁵³

Thus, in Melendez-Diaz, the Supreme Court makes two things clear: (1) a defendant has the obligation to assert the right to confrontation at or before trial, in compliance with applicable trial court procedural rules, and (2) this obligation is part and parcel of the confrontation right itself, the parameters of which are based upon—and dependent upon—defendants being held to their obligation of timely assertion. In short, *the decision clearly establishes that, when a defendant's confrontation right is not timely assert, it is lost.*^[54]

In O'Cain, the defendant raised a confrontation clause challenge to the admission of statements made by an absent witness.⁵⁵ This court concluded, "Because [the defendant] did not assert his confrontation clause objection at or before trial, he cannot obtain appellate relief on that claim."⁵⁶

⁵¹ See ER 401; RP (Apr. 8, 2016) at 674 ("So I would exclude any evidence of the photographs or other evidence of [E.M.] being in possession of a firearm at times other than what he's testified about or the matter that he testified about in his testimony."); RP (Apr. 8, 2016) at 676 ("And moving to the matter of marijuana, if . . . it was part of the res gestae, if you will, of the encounters that the defendant allegedly had with the alleged victims, then I believe I would need to permit that.").

⁵² 169 Wn. App. 228, 279 P.3d 926 (2012).

⁵³ 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009).

⁵⁴ O'Cain, 169 Wn. App. at 240 (emphasis added).

⁵⁵ Id. at 232.

⁵⁶ Id.

In O'Cain, this court also recognized ER 103 is a rule the State is allowed to adopt governing the exercise of confrontation clause objections.⁵⁷ Pursuant to ER 103(a)(1), "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless . . . a timely objection or motion to strike is made, stating the *specific ground of objection*."⁵⁸ "A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial."⁵⁹

Here, Sage failed to argue in the trial court that the confrontation clause supported his request to admit evidence of E.M.'s use of marijuana in other settings and E.M.'s experience with his father's guns. He may not raise the confrontation argument for the first time on appeal.

(iii) *Sage's Gun Ownership*

Sage argues testimony about guns in his home was unduly prejudicial and should have been excluded.

There was limited testimony about guns in Sage's home. E.M. testified that at one point he contemplated suicide and there was a pistol at Sage's house with a "very loose lock on it."⁶⁰ E.M. said he contemplated suicide because he was not happy. E.M.'s father testified, "I knew [Sage] owned a firearm and I thought it

⁵⁷ Id. at 242-43 ("As noted in Melendez-Diaz, 'States may adopt procedural rules governing the exercise of such [confrontation clause] objections.' Washington's Evidence Rule (ER) 103 is one such rule.") (alteration in original) (quoting Melendez-Diaz, 557 US. at 314 n.3).

⁵⁸ Id. at 243.

⁵⁹ State v. Koepke, 47 Wn. App. 897, 911, 738 P.2d 295 (1987).

⁶⁰ RP (Apr. 8, 2016) at 652.

might result in a hostage situation.”⁶¹ But Sage failed to timely object. Sage failed to preserve this claimed error.

(iv) Pornography

E.M. testified that he and Sage would watch pornography together, which would lead to intercourse. Sage argues the evidence that he watched pornography and recorded sex acts with E.M. was unduly prejudicial, but Sage did not object to this testimony at trial. Sage may not raise this claimed error for the first time on appeal.

E.M. testified that Sage made video recordings of their sex acts. During the State's investigation, an Island County detective conducted a forensic examination of Sage's laptop. Sage's counsel and the State addressed the detective's testimony about the laptop and alleged videos of E.M. and Sage during motions in limine. The detective testified that during the investigation, they did not encounter any video recordings of these sex acts, but they found a laptop that was encrypted, therefore, they could not gain access to its files. Sage's counsel agreed to the admissibility of such testimony.⁶²

⁶¹ RP (Apr. 7, 2016) at 517.

⁶² RP at 925-26 (Defense counsel said, “I actually spoke to Detective Wallace and Detective Peabody during interviews, and I have no objection with them testifying to what they've done . . . with computers and things of that nature. What I'm concerned about is them making expert opinion as to why it's encrypted.”); see State v. Powell, 166 Wn.2d 73, 84, 206 P.3d 321 (2009) (“Defense counsel specifically agreed that the State could introduce testimony from [the defendant's roommate] regarding Powell's drug use on the day of the attempted burglary.”).

Further, this evidence was germane to the State's theory of the case and the timeline of its investigation. We conclude the evidence's probative value outweighed any potential prejudicial effect and was properly admitted.

Sage's Motion for Mistrial

On the third day of trial, the State called E.M. as a witness.⁶³ The court reporter documented the following exchange:

[STATE]: Next witness will be [E.M.], Your Honor. . . .

[COURT]: All right.

(Witness enters the well of the courtroom, leans over, and glares at Defendant while walking in to be sworn.)^[64]

Defense counsel objected and moved for a mistrial, characterizing the exchange as

[E.M.] walked past defense counsel and hissed at the Defendant, bent down, and made an aggressive stare. As best as I could tell, the jurors looked horrified. Their reaction is clear that the stance or that moment is going to live in their minds as opposed to what he testifies to. My client has a right to a fair trial, to be presumed innocent, [] and I don't know that he can get a fair trial with this jury after that behavior.^[65]

The trial court sustained the objection but denied the motion for mistrial, ruling

[t]he next witness, who I presume is [E.M.], walked into the courtroom, came through the door of the bar, as it were. And as he did so, turned his head so as to look in the direction of the Defendant. He kind of craned his neck toward the Defendant and appeared to be staring at the Defendant for a couple of seconds.

⁶³ RP at 573.

⁶⁴ RP at 573.

⁶⁵ RP at 574.

[Defense counsel] made an objection at that point. And at that point, the Court took a recess without ruling on the objection.^{66]}

The court also noted, "I personally did not hear any hissing. I did not particularly observe the jurors' reactions except when I looked over at them after hearing the word 'objection' from [defense counsel]. I did not observe personally any untoward reactions on the part of the jury at that point."⁶⁷ The court gave a curative instruction agreed to by Sage's counsel.⁶⁸

Sage argues his motion for a mistrial should have been granted because E.M.'s courtroom behavior prejudiced the jury.

We review the denial of a motion for mistrial for abuse of discretion.⁶⁹ The trial court should only grant a mistrial "when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant will be fairly tried."⁷⁰ To determine the effect of the irregularity, we examine: (i) its seriousness; (ii) whether it involved cumulative evidence; and (iii) whether the trial court properly instructed the jury to disregard it.⁷¹

⁶⁶ RP at 575-76.

⁶⁷ RP at 576.

⁶⁸ "Ladies and gentlemen of the jury, I instruct you to disregard the events that occurred just prior to the last recess involving the next witness coming into the courtroom and what you may have observed in that regard." RP (Apr. 7, 2016) at 578.

⁶⁹ State v. Emery, 174 Wn.2d 741, 765, 278 P.3d 653 (2012) (quoting State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989)).

⁷⁰ Id. at 764.

⁷¹ Id.

In State v. Emery, our Supreme Court held the defendant was not entitled to a mistrial because his codefendant's courtroom outbursts that Emery was "lying"⁷² were not the type of irregularities that have warranted mistrials in other cases, such as a police officer's sworn testimony about a defendant's past crimes,⁷³ (ii) the outbursts were consistent with his later testimony, and (iii) the trial court excused the jury and properly instructed it to disregard the outbursts.⁷⁴ And in State v. Bourgeois, our Supreme Court held two instances of spectator misconduct, glaring and making gun-mimicking gestures toward witnesses, though serious, did not warrant a new trial.⁷⁵

Here, E.M. entered the courtroom and glared at Sage. The trial court denied Sage's motion for mistrial and entered a detailed ruling on the record. Unlike a verbal outburst or threatening gesture, E.M. glared at Sage. The court gave a curative instruction. E.M. did not repeat the behavior after the trial court instructed the jury to disregard the behavior. We conclude the trial court did not abuse its discretion.

Community Custody Conditions

Sage argues unconstitutionally vague or impermissible community custody conditions must be stricken. The State concedes the following conditions should

⁷² 174 Wn.2d 741, 750, 278 P.3d 653 (2012).

⁷³ Id. at 765-66 (discussing State v. Miles, 73 Wn.2d 67, 436 P.2d 198 (1968)).

⁷⁴ Id. at 766.

⁷⁵ 133 Wn.2d 389, 411, 945 P.2d 1120 (1997).

be vacated: (i) condition 6 restricting daily travel at the community corrections officer's discretion, (ii) condition 12 prohibiting possession of drug paraphernalia, (iii) condition 15 prohibiting any Internet access, and (iv) condition 18 requiring Sage to participate in substance abuse treatment. We agree these conditions are unconstitutionally vague or insufficiently crime related, and thus should be stricken on remand.

Statement of Additional Grounds for Review

In a statement of additional grounds, Sage argues the absence of the separate and distinct act jury instruction violated double jeopardy. But as discussed, this argument fails. He also makes various arguments about J.M. and E.M.'s credibility, but those determinations are for the trier of fact.

Exceptional Sentence

Sage argues the trial court judge engaged in prohibited fact finding regarding the exceptional sentence, violating his right to trial by jury.

The Sixth Amendment to the United States Constitution guarantees criminal defendants a right to trial by jury. Seventeen years ago, the United States Supreme Court directed that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."⁷⁶ Thirteen

⁷⁶ Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

years ago, the United States Supreme Court reaffirmed the prohibition on judicial fact finding in enhanced sentencing hearings.⁷⁷

A series of statutory amendments and Washington cases have addressed the standards for exceptional sentences consistent with a defendant's constitutional right to jury trial.

RCW 9.94A.537(3) directs that "[t]he facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory." RCW 9.94A.537(6) provides that if a jury unanimously finds beyond a reasonable doubt the existence of "one or more of the facts alleged by the state in support of an aggravated sentence," the court may impose an exceptional sentence "*if it finds*, considering the purposes of this chapter, that the facts found [by the jury] are substantial and compelling reasons justifying an exceptional sentence."⁷⁸ RCW 9.94A.535 authorizes a court to impose an exceptional sentence "*if it finds* . . . there are substantial and compelling reasons justifying an exceptional sentence."⁷⁹

Washington cases recognize that once the jury by special verdict makes the factual determination whether aggravating circumstances have been proven beyond a reasonable doubt, "[t]he trial judge [is] left only with the legal conclusion

⁷⁷ Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

⁷⁸ (Emphasis added.)

⁷⁹ (Emphasis added.)

of whether the facts alleged and found were sufficiently substantial and compelling to warrant an exceptional sentence.”⁸⁰ Sage disputes this authority, arguing a judge’s determination whether an aggravating circumstance is substantial and compelling necessarily involves factual questions. While the authority he disputes is plentiful and longstanding, a fog lingers.

Despite the seemingly clear delineation of the limited role of the judge to determine whether jury findings are sufficiently substantial and compelling to warrant an exceptional sentence, sentencing judges face uncertainty. Not only do the statutes continue to refer to “findings” to be made by the judge on exceptional sentences,⁸¹ our Supreme Court in State v. Friedlund emphasized that written rather than oral findings of fact by the judge are “essential” for an exceptional sentence.⁸²

⁸⁰ State v. Suleiman, 158 Wn.2d 280, 290-91 & 291 n.3, 143 P.3d 795 (2006) (“In the context of discussions about standard of review, this court has held that whether a court’s stated reasons are sufficiently substantial and compelling to support an exceptional sentence is a question of law. [State v. Cardenas, 129 Wn.2d 1, 6 n.1, 914 P.2d 57 (1997);] State v. Chadderton, 119 Wn.2d 390, 399, 832 P.2d 481 (1992); State v. Grewe, 117 Wn.2d 211, 215-16, 813 P.2d 1238 (1991); State v. Nordby, 106 Wn.2d 514, 418, 723 P.2d 1117 (1986). In contrast, whether an aggravating factor is present in a particular case, in other words, whether a stated reason is supported by the record, is a factual determination. Nordby, 106 Wn.2d at 517-18; see also Cardenas, 129 Wn.2d at 5 (applying a clearly erroneous standard to this question); State v. Fisher, 108 Wn.2d 419, 423, 739 P.2d 683 (1987); State v. Woody, 48 Wn. App. 772, 776, 742 P.2d 133 (1987). Thus, whether a particular aggravating factor is supported by the record is a question of fact, while the question of whether the found factors are sufficiently substantial and compelling is a matter of law.”).

⁸¹ RCW 9.94A.535; RCW 9.94A.537(6).

⁸² 182 Wn.2d 388, 393-95, 341 P.3d 280 (2015).

The only permissible “finding of fact” by a sentencing judge on an exceptional sentence is to confirm that the jury has entered by special verdict its finding that an aggravating circumstance has been proven beyond a reasonable doubt.⁸³ Then it is up to the judge to make the legal, not factual, determination whether those aggravating circumstances are sufficiently substantial and compelling to warrant an exceptional sentence.

Here, the jury entered special verdict forms setting out specific findings that the aggravating circumstances had been proven beyond a reasonable doubt. The court made “findings of fact” noting that those special verdicts had been entered. Then the judge concluded that the jury findings presented “substantial and compelling” grounds for an exceptional sentence. Notably, at sentencing, the court recited the evidence that supported the jury findings. The court considered the purposes of the Sentencing Reform Act of 1981 and imposed an exceptional sentence, setting forth its written “findings of fact and conclusions of law” for an

⁸³ Whether a jury has entered a special verdict and the contents of the special verdict is normally apparent from the record on appeal, but it is not inappropriate for a judge to identify the process relied on in arriving at a decision. Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 35-36, 873 P.2d 498 (1994) (“The purpose of findings of fact is to ensure that the decision maker ‘has dealt fully and properly with all the issues in the case before he [or she] decides it and so that the parties involved’ and the appellate court ‘may be fully informed as to the bases of his [or her] decision when it is made.’ Findings must be made on matters ‘which establish the existence or nonexistence of determinative factual matters. The process used by the decision maker should be revealed by findings of fact and conclusions of law.’”) (alterations in original) (quoting In re LaBelle, 107 Wn.2d 196, 218-19, 728 P.2d 138 (1986)).

exceptional sentence as an appendix to the judgment and sentence.⁸⁴ It also found the exceptional sentence was “justified by each and every one of the special verdicts.”⁸⁵ We conclude the trial court properly analyzed and articulated the basis for the exceptional sentence without engaging in prohibited fact finding.⁸⁶

Finally, Sage argues that the State did not give adequate notice that the aggravating circumstances could be based on acts occurring outside the charging period and that the jury was permitted to find aggravating circumstances without unanimously agreeing the aggravating circumstances occurred within the charging period. But the premise of his argument is inaccurate. Inherent in each of the statutory aggravating circumstances is the requirement that the circumstances were part of the commission of the crime charged.⁸⁷ And the jury was instructed

⁸⁴ Clerk’s Papers at 25-26.

⁸⁵ RP (May 12, 2016) at 882.

⁸⁶ Sage cites the United States Supreme Court decision in Hurst v. Florida, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016) in support of his argument that the judge engaged in prohibited fact finding. In Hurst, the Supreme Court held Florida’s death penalty procedure violated the defendant’s Sixth Amendment right to a jury trial because the jury’s findings of aggravating factors were advisory, resulting in prohibited fact finding by the judge. But the Florida statute at issue expressly stated that the jury findings were “advisory.” FLA. STAT. § 921.141 (2004). By contrast, under Washington procedure here, the jury exclusively resolves the factual question whether the aggravating circumstances have been proven beyond a reasonable doubt.

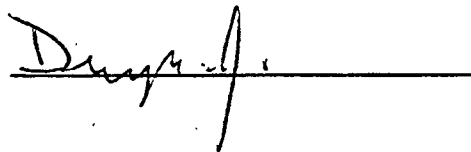
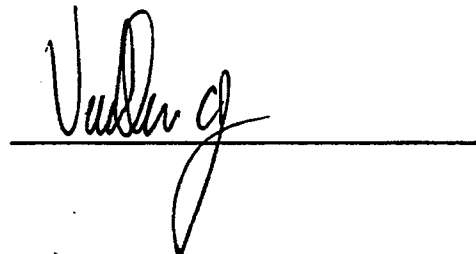
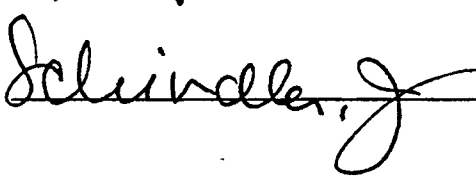
⁸⁷ Here, the jury answered “Yes” to special verdict form inquiries regarding special aggravating circumstances found in RCW 9.94A.535(3)(g) (“The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.”), RCW 9.94A.535(3)(j) (“The defendant knew that the victim of the current offense was a youth not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.”), and

they had to be unanimous beyond a reasonable doubt as to each of the aggravating factors. Sage relies on cases that do not apply to these facts, these instructions, and these aggravating circumstance special verdict forms.⁸⁸

We also reject Sage's argument of cumulative error because there were not multiple errors capable of a cumulative impact.

We affirm and remand with instructions to strike community custody conditions 6, 12, 15, and 18.

WE CONCUR:

A handwritten signature, likely "Dwyer", written in black ink over a horizontal line.A handwritten signature, likely "Vandergriff", written in black ink over a horizontal line.
A handwritten signature, likely "Schindler", written in black ink over a horizontal line.

RCW 9.94A.535(3)(n) ("The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.").

⁸⁸ Sage cites State v. Williams-Walker, 167 Wn.2d 889, 897-98, 225 P.3d 913 (2010) (limits exceptional sentence to the findings by the jury) and State v. Severns, 13 Wn.2d 542, 548, 125 P.2d 659 (1942) (bars charging under one alternative means but instructing on another).

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JUN 20 2016
COA-DIVISION 1

Superior Court of Washington
County of Island

CoA No. 75279-1

#103
P

State of Washington, Plaintiff,

No. 15-1-00078-1

vs.

JONATHAN SAMUEL SAGE,
Defendant.
PCN: 933367568
SID: WA20662542
DOB: 08/19/1982

Felony Judgment and Sentence --
☒ RCW 9.94A.507 Prison Confinement
(Sex Offense and Kidnapping of a Minor)
(FJS)
☒ Clerk's Action Required, para 2,1, 4.1, 4.3a,
4.3b, 4.8, 5.2, 5.3, 5.5, and 5.7
☐ Defendant Used Motor Vehicle
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer Cassandra Lopez de Arriaga, and the Island County Prosecuting Attorney Gregory M. Banks, or his deputy Eric M. Ohme, were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
☒ jury-verdict (date) April 11, 2016:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	Rape of a Child in the Second Degree with Aggravating Circumstances Crime Code: 0082700 OIN: 15-103622	9A.44.076 9.94A.535(3)(g) 9.94A.535(3)(n)	FA	09/01/2011 - 06/30/2012
II	Rape of a Child in the Second Degree with Aggravating Circumstances Crime Code: 0082700 OIN: 15-103622	9A.44.076 9.94A.535(3)(g) 9.94A.535(3)(n)	FA	09/01/2011 - 06/30/2012
III	Rape of a Child in the Second Degree with Aggravating Circumstances Crime Code: 0082700 OIN: 15-103622	9A.44.076 9.94A.535(3)(g) 9.94A.535(3)(n)	FA	12/19/2011 - 12/19/2012

Felony Judgment and Sentence (FJS) (Prison)
Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2014))

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16-9 00220-0

IV	Rape of a Child in the Second Degree with Aggravating Circumstances Crime Code: 0082700 OIN: 15-103622	9A.44.076 9.94A.535(3)(g) 9.94A.535(3)(n)	FA	12/19/2011 – 12/19/2012
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Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

☒ The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.507.

The jury returned a special verdict or the court made a special finding with regard to the following:

☐ For the crime(s) charged in Count, domestic violence was pled and proved. RCW 10.99.020.

☐ The defendant used a **firearm** in the commission of the offense in Count _____ RCW 9.94A.825, 9.94A.533.

☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ RCW 9.94A.825, 9.94A.533.

☐ Count _____, is aggravated murder in the first degree committed while the defendant was ☐ under 16 years of age, ☐ 16 or 17 years of age when the offense was committed.

☐ Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.

☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.

☐ In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.

☐ The offense was predatory as to Count _____. RCW 9.94A.836.

☐ The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.

☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

☐ The defendant acted with sexual motivation in committing the offense in Count _____. RCW 9.94A.835.

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

☐ In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.____.

☐ Count _____, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

☐ Count _____ is a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.

☐ Count _____ is the crime of unlawful possession of a firearm. The defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.____.

- ☐ The defendant committed ☐ vehicular homicide ☐ vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- ☐ In Count ____, the defendant had (number of) ____ passenger(s) under the age of 16 in the vehicle. RCW 9.94A.533.
- ☐ Count ____ involves attempting to elude a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- ☐ In Count ____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- ☐ Count ____ is a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- ☐ The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- ☐ In Count ____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- ☐ Counts ____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- ☒ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes
1. N/A			

*DV: Domestic Violence was pled and proved.

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1 N/A						

*DV: Domestic Violence was pled and proved.

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions listed as number(s) ____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions listed as number(s) ____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

Felony Judgment and Sentence (FJS) (Prison)
Sex Offense and Kidnapping of a Minor Offense
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2014))

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2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	9	XI	210 – 280 months		210 – 280 months	Life and/or a \$50,000 fine
II	9	XI	210 – 280 months		210 – 280 months	Life and/or a \$50,000 fine
III	9	XI	210 – 280 months		210 – 280 months	Life and/or a \$50,000 fine
IV	9	XI	210 – 280 months		210 – 280 months	Life and/or a \$50,000 fine

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16..

☐ Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 ☒ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) _____.

☒ above the standard range for Counts I, II, III and IV.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☒ found by jury, by special interrogatory.

☐ within the standard range for Count(s) _____, but served consecutively to Count(s) _____.
Findings of fact and conclusions of law are attached in Appendix 2.4. ☒ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): _____

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

☐ (Name of agency) _____'s costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

2.6 Felony Firearm Offender Resitration. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

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- ☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
- ☐ evidence of the defendant's propensity for violence that would likely endanger persons.
- ☐ other: _____
- ☐ The court decided the defendant ☐ should, ☐ should not register as a felony firearm offender.

III. Judgment

- 3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 ☐ The court **dismisses** Counts in the charging document.

IV. Sentence and Order

It is ordered:

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

~~420~~ ~~560~~ ^{to life} months on Count I
~~420~~ ~~560~~ ^{to life} months on Count II
~~420~~ ~~560~~ ^{to life} months on Count III
~~420~~ ~~560~~ ^{to life} months on Count IV

- ☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- ☐ The confinement time on Count _____ includes _____ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: ~~560~~ ^{to life} ~~420~~ months confinement.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

~~(b) Confinement.~~ RCW 9.94A.507 (Sex Offenses only). A term of total confinement in the custody of the county jail:

~~months on Count~~

~~Actual number of months of total confinement ordered is: months confinement.~~

~~All counts shall be served concurrently, except for the following which shall be served consecutively:~~

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

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

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count	I	minimum term: <u>420-560</u> months	maximum term: <u>Life</u>
Count	II	minimum term: <u>420-560</u> months	maximum term: <u>Life</u>
Count	III	minimum term: <u>420-560</u> months	maximum term: <u>Life</u>
Count	IV	minimum term: <u>420-560</u> months	maximum term: <u>Life</u>

- (c) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.
- (d) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701, RCW 10.95.030(3))

Prison: RCW 9.94A.501, .507, .663, .665, .701, .702

(A) The defendant shall be on community custody for:

Counts I, II, III and IV lifetime community custody.

Defendant shall report to the DOC within 72 hours of entry of this judgment if not in custody, otherwise within 72 hours of release from confinement.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol.

☒ have no contact with: JM, DOB: 10/26/98 or EM, DOB: 12/19/99

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

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

☐ participate in an education program about the negative costs of prostitution.

☐ participate in the following crime-related treatment or counseling services:

☒ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse ☒ sexual deviancy
☐ mental health ☐ anger management, and fully comply with all recommended treatment.

☐ comply with the following crime-related prohibitions: ☐ contained in Appendix A.

☒ Other conditions: Comply with conditions 1 – 23 on pages 6 & 7 of the Department of Corrections Pre-Sentence Investigation attached hereto.

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not committed any crimes after he or she turned 18 or committed a major violation in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant may be subject to community custody under the supervision of the DOC for a period of time determined by the Board. The defendant will be required to comply with any conditions imposed by the Board.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment	RCW 7.68.035
	\$	Domestic Violence assessment	RCW 10.99.080
CRC	\$ 217.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ 200.00	FRC
		Witness costs \$	WFR
		Sheriff service fees \$ 17.00	SFR/SFS/SFW/WRF
		Jury demand fee \$	JFR

Felony Judgment and Sentence (FJS) (Prison)
Sex Offense and Kidnapping of a Minor Offense
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2014))

ISLAND COUNTY PROSECUTING ATTORNEY
P.O. Box 5000, Coupeville, WA 98239

Extradition costs \$ _____ EXT
 Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760
FCM/MTH \$ _____ Fine RCW 9A.20.021; [x] VUCSA chapter 69.50 RCW, [] VUCSA additional
 fine deferred due to indigency RCW 69.50.430
CDF/LDI/FCD \$ _____ Drug enforcement fund of _____ RCW 9.94A.760
NTF/SAD/SDI

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760
 \$ _____ DUI fines, fees and assessments
CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
DNA \$ 100.00 DNA collection fee RCW 43.43.7541
FPV \$ _____ Specialized forest products RCW 76.48.140
PPI \$ _____ Trafficking/Promoting prostitution/commercial sexual abuse of minor fee (may be
 reduced by no more than two thirds upon a finding of inability to pay.) RCW
 9A.40.100, 9A.88.120, 968A.105

DEF \$ _____ Emergency response costs (\$1000 maximum, \$2,500 max. effective Aug. 1,
 2012.) RCW 38.52.430
 Agency: _____

DFA \$ _____ Contribution to Island County Drug Fund, Revenue
 Code 133-000-35150 RCW 9.94A.030(30)
 \$ _____ Other fines or costs for: _____

RTN/RJN \$ Reserved Restitution to: J.M., DOB: 10/26/1998 and E.M., DOB: 12/19/1999
 \$ Reserved Restitution to: Crime Victims Compensation Program
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided
 confidentially to Clerk of the Court's office.)

\$ _____ **Total** RCW 9.94A.760

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

[x] shall be set by the prosecutor.

[] is scheduled for _____ (date).

[x] The defendant waives any right to be present at any restitution hearing (sign initials): _____.

[] **Restitution** Schedule attached.

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

Name of other defendant Cause Number (Victim's name) (Amount-\$)

R/JN

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

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$100.00 per month commencing 30 days after release from confinement. RCW 9.94A.760. Any monies received while incarcerated shall be immediately applied to legal financial obligations as specified in Chapter 72.09 RCW.

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

[X] Defendant shall meet with the Island County Collection's Clerk within 72 hours of release from custody to establish or review the appropriateness of the collections schedule.

[] The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

[] If sentenced to County jail, Defendant must meet with the County Clerk Collections Deputy prior to release from custody.

The Clerk is authorized to collect from the defendant up to \$100 per year for costs of collection services. RCW 36.18.190 and RCW 9.94A.780(5).

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

4.3b[] Electronic Monitoring Reimbursement. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

[x] **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 [x] No Contact: The defendant shall not have contact with J.M., DOB: 10/26/1998 or E.M., DOB: 12/19/1999 (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (which does not exceed the maximum statutory sentence).

[x] The defendant is excluded or prohibited from coming within 500 feet (distance) of:
[x] J.M. or E.M.'s [x] home/ residence [x] work place [x] school [] (other location(s))
_____, or
[] other location: _____,
for life (which does not exceed the maximum statutory sentence).

[x] A separate Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other: Any property recovered is forfeited to the Island County Sheriff's Office.

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Exoneration: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

[] This crime involves rape of a child in which the victim became pregnant. The defendant shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is larger.

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5a Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.5b [] Felony Firearm Offender Registration. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Sex and Kidnapping Offender Registration. RCW 9A.44.128, 9A.44.130, 10.01.200.

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

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

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

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

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

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

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

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

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

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

5.7 [] Department of Licensing Notice: The court finds that Count is a felony in the commission of which a motor vehicle was used. Clerk's Action -The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):

- ☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of ____.
- ☐ No BAC test result.
- ☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- ☐ Drug Related. The defendant was under the influence of or affected by any drug.
- ☐ THC level was ____ within two hours after driving.
- ☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: ☐ Commercial Veh.; ☐ 16 Passenger Veh.; ☐ Hazmat Veh..

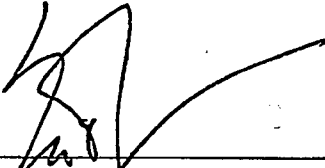
5.8 Other _____

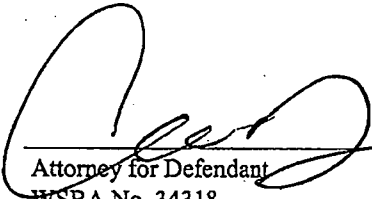
Done in Open Court and in the presence of the defendant this date: May 12, 2016

Alan R. Hancock
Judge Alan R. Hancock

Felony Judgment and Sentence (FJS) (Prison)
Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2014))

ISLAND COUNTY PROSECUTING ATTORNEY
P.O. Box 5000, Coupeville, WA 98239


Deputy Prosecuting Attorney
WSBA No. 28398
Print Name: Eric M. Ohme


Attorney for Defendant
WSBA No. 34318
Print Name: Cassandra Lopez de Arriaga


Defendant
Print Name: Jonathan Samuel Sage

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____

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

I certify under penalty of perjury under the law of the state of Washington that the foregoing is true and correct.

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

Interpreter signature/Print name: _____

VI. Identification of the Defendant

SID No. WA20662542
(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

Date of Birth: 08/19/1982

FBI No. 66805DD2

Local ID No. _____

PCN No. 933367568

Other _____

Alias name, DOB: _____

Race:

☐ Asian/Pacific Islander

☐ Black/African-American

☒ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☒ Male

☐ Native American

☐ Other: _____

☐ Non-Hispanic

☐ Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, CIR Senell #1144 Dated: 5/12/16

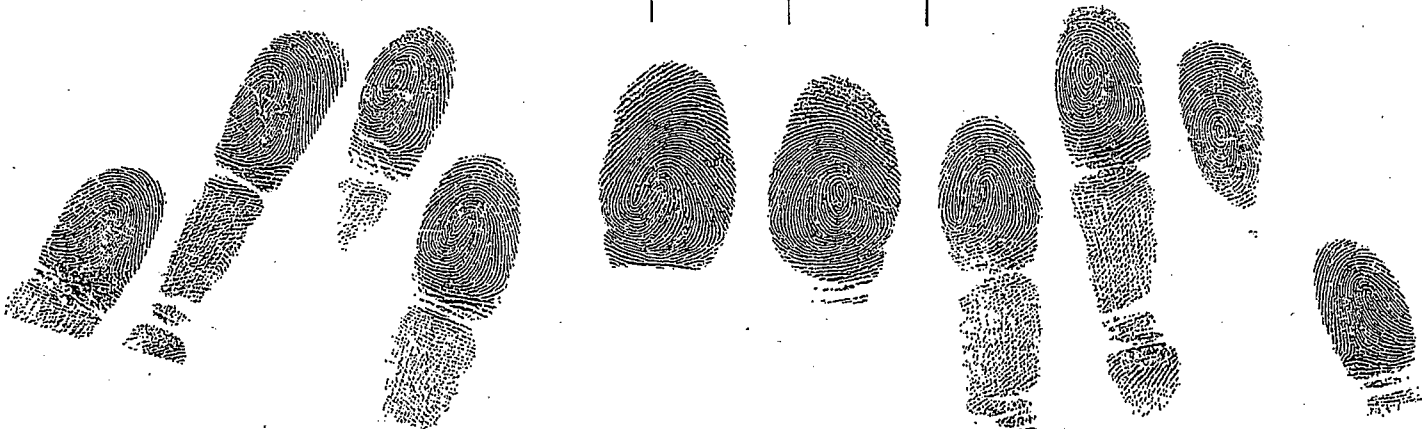
The defendant's signature: [Signature]

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



Felony Judgment and Sentence (FJS) (Prison)
Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2014))

ISLAND COUNTY PROSECUTING ATTORNEY
P.O. Box 5000, Coupeville, WA 98239

Confinement: 280 months

Length of Community Custody: 36 months

Conditions of Supervision: In addition to the standard conditions, I recommend the following special conditions:

1. Have no direct or indirect contact with JM and EM for life.
2. Pay all restitution and legal financial obligations.
3. Obey all municipal, county, state, tribal and federal laws.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions, which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
7. Do not possess or access depictions of minors engaged in sexually explicit conduct, as defined by RCW 9.68.011.
8. Do not date women or form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
9. Do not remain overnight in a residence where minor children live or are spending the night.
10. Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.
11. Do not possess or consume controlled substances unless you have a legally issued prescription.
12. Do not possess drug paraphernalia.
13. Stay out of drug areas, as defined in writing by the supervising Community Corrections Officer.
14. Find and maintain fulltime employment and/or a fulltime educational program during the period of supervision, as directed by the supervising Community Corrections Officer.
15. Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.
16. Participate in a sexual deviancy evaluation with a certified provider and make progress in any recommended course of treatment. Follow all conditions outlined in your treatment contract. Do not change therapists without advance permission of the supervising Community Corrections Officer / Indeterminate Sentence Review Board / Court.

Sage, Jonathan
DOC #390306

05/05/16
Page 6 of 7

17. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
18. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.
19. Participate in urinalysis, Breathalyzer, and polygraph examinations as directed by the supervising Community Corrections Officer, to monitor compliance with conditions of community custody.
20. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
21. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.
22. Based on eligibility, enter and successfully complete identified interventions to assist you to improve your skills, relationships, and ability to stay crime free.
23. Register as a sex offender with the county of your residence for the period provided by law.

XII. MONETARY OBLIGATIONS:

Restitution: TBD
Victim Penalty: \$500.00
Drug Fund: TBD

Court Costs: TBD
Attorney Fees: TBD
Fine: TBD

Other: TBD

Submitted by:



Mindelle Francis
Community Corrections Officer
Pre-sentence Investigations Unit
Department of Corrections
(425) 267-3086

Approved by:



Lori Black
Community Corrections Supervisor

Original: Court
copy: Prosecuting Attorney - Eric Ohme
copy: Defense Attorney - Cassandra Lopez De Arriaga
copy: File

Sage, Jonathan
DOC #390306

05/05/16
Page 7 of 7

APPENDIX C

c r

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN SAMUEL SAGE,

Petitioner.

No. 95868-8

ORDER

Court of Appeals
No. 75279-1-I

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered at its September 4, 2018, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 5th day of September, 2018.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

APPENDIX D

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

STATE OF WASHINGTON,)	No. 75279-1-I
)	
Respondent,)	
)	
v.)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
JONATHAN SAMUEL SAGE)	AND CORRECTING OPINION
)	
Appellant.)	

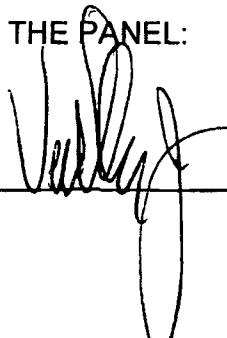
Appellant filed an amended motion for reconsideration of the court's December 18, 2017 opinion. At the request of the court, respondent filed an answer thereto. Having considered the motion and answer, the panel has determined the motion for reconsideration should be denied, but that the opinion should be corrected on page 18 as follows. In the first sentence of the second paragraph, "E.M. testified that Sage made video recordings," change "Sage" to "he." No further changes should be made. Now, therefore, it is hereby

ORDERED that appellant's amended motion for reconsideration is denied.

It is further

ORDERED that the December 18, 2017 opinion shall be corrected as noted above.

FOR THE PANEL:



APPENDIX E

E -

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

RECEIVED

SEP 21 2018

Washington Appellate Project

STATE OF WASHINGTON,

Respondent,

v.

JONTHAN SAMUEL SAGE,

Appellant.

No. 75279-1-I

MANDATE

Island County

Superior Court No. 15-1-00078-1

Court Action Required

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Island County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on December 18, 2017, became the decision terminating review of this court in the above entitled case on September 21, 2018. An order denying a motion for reconsideration and correcting opinion was entered on April 4, 2018. An order denying a petition for review was entered in the Supreme Court on September 5, 2018. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

c:

Jonathan Sage
Nancy Collins
Abraham Borenstein
Gregory Banks
Hon. Alan Hancock

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 21st day of September, 2018.

RICHARD D. JOHNSON

Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.

APPENDIX F

**Superior Court of Washington
County of Island**

State of Washington, Plaintiff,

vs.
JONATHAN SAMUEL SAGE,
Defendant.

No. 15-1-00078-1

**Findings of Fact and Conclusions of Law for
an Exceptional Sentence
(Appendix 2.4 Judgment and Sentence)
(Optional)
(FNFCL)**

The court imposes upon the defendant an exceptional sentence [x] above [] within [] below the standard range based upon the following Findings of Fact and Conclusions of Law:

Findings of Fact

- I. The exceptional sentence is justified by the following aggravating circumstances:
- (a) Affirmative finding by a jury on Count I: Aggravating Factor that the Offense was Part of an Ongoing Pattern of Sexual Abuse of the Same Victim Under the Age of Eighteen Years Manifested by Multiple Incidents Over a Prolonged Period of Time, contrary to RCW 9.94A.535(3)(g).
 - (b) Affirmative finding by a jury on Count I: Aggravating Factor that the Defendant Used His Position of Trust, Confidence, or Fiduciary Responsibility to Facilitate the Commission of the Current Offense, contrary to RCW 9.94A.535(3)(n).
 - (c) Affirmative finding by a jury on Count II: Aggravating Factor that the Offense was Part of an Ongoing Pattern of Sexual Abuse of the Same Victim Under the Age of Eighteen Years Manifested by Multiple Incidents Over a Prolonged Period of Time, contrary to RCW 9.94A.535(3)(g).
 - (d) Affirmative finding by a jury on Count II: Aggravating Factor that the Defendant Used His Position of Trust, Confidence, or Fiduciary Responsibility to Facilitate the Commission of the Current Offense, contrary to RCW 9.94A.535(3)(n).
 - (e) Affirmative finding by a jury on Count III: Aggravating Factor that the Offense was Part of an Ongoing Pattern of Sexual Abuse of the Same Victim Under the Age of Eighteen Years Manifested by Multiple Incidents Over a Prolonged Period of Time, contrary to RCW 9.94A.535(3)(g).
 - (f) Affirmative finding by a jury on Count III: Aggravating Factor that the Defendant Used His Position of Trust, Confidence, or Fiduciary Responsibility to Facilitate the Commission of the Current Offense, contrary to RCW 9.94A.535(3)(n).

(g) Affirmative finding by a jury on Count III: Aggravating Factor that Defendant Knew That the Victim of the Current Offense was a Youth Who Was Not Residing with a Legal Custodian and Established or Promoted the Relationship for the Primary Purpose of Victimization, RCW: 9.94A.535(3)(j).

(h) Affirmative finding by a jury on Count IV: Aggravating Factor that the Offense was Part of an Ongoing Pattern of Sexual Abuse of the Same Victim Under the Age of Eighteen Years Manifested by Multiple Incidents Over a Prolonged Period of Time, contrary to RCW 9.94A.535(3)(g).

(i) Affirmative finding by a jury on Count IV: Aggravating Factor that the Defendant Used His Position of Trust, Confidence, or Fiduciary Responsibility to Facilitate the Commission of the Current Offense, contrary to RCW 9.94A.535(3)(n).

(j) Affirmative finding by a jury on Count IV: Aggravating Factor that Defendant Knew That the Victim of the Current Offense was a Youth Who Was Not Residing with a Legal Custodian and Established or Promoted the Relationship for the Primary Purpose of Victimization, RCW: 9.94A.535(3)(j).

[x] The grounds listed in the preceding paragraph, taken together or considered individually, constitute sufficient cause to impose the exceptional sentence. This court would impose the same sentence if only one of the grounds listed in the preceding paragraph is valid.

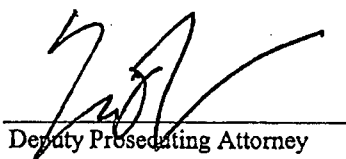
II.

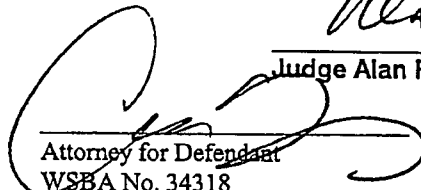
Conclusions of Law

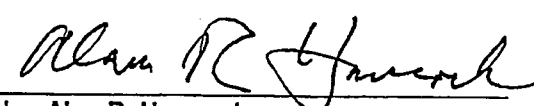
I. There are substantial and compelling reasons to impose an exceptional sentence pursuant to RCW 9.94A.535.

II.

Dated this 12th day of May, 2016.


Deputy Prosecuting Attorney
WSBA No. 28398
Print Name: Eric M. Ohme


Attorney for Defendant
WSBA No. 34318
Print Name: Cassandra Lopez de Arriaga


Judge Alan R. Hancock

Defendant
Print Name: Jonathan Samuel Sage

APPENDIX G

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