

## **TABLE OF CONTENTS TO APPENDICES**

APPENDIX A	Decision of State of Oregon Court of Appeals, January 05, 2023
APPENDIX B	Decision of the Circuit Court of the State of Oregon for the County of Lane, October 28, 2020
APPENDIX C	Oregon of the Supreme Court of the State of Oregon, Denying Review, April 20, 2023
APPENDIX D	Oregon of the Supreme Court of the State of Oregon, Appellate Judgment, June 21, 2023
APPENDIX E	Judgment
APPENDIX F	Sentencing memorandum
APPENDIX G	Motion in Limine to Exclude Prior Bad Act evidence
APPENDIX H	Superseding Indictment
APPENDIX I	Register of Actions

FILED: January 05, 2023

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

CHRISTOPHER RAY LIPSKA, aka Christopher Ray Hare,  
Defendant-Appellant.

Lane County Circuit Court  
19CR51891

A175007

Charles M. Zennaché, Judge.

Submitted on December 07, 2022.

Before Shorr, Presiding Judge, and Mooney, Judge, and Pagán, Judge.

Attorney for Appellant: Daniel C. Bennett.

Attorney for Respondent: Patrick M. Ebbett.

**AFFIRMED WITHOUT OPINION**

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

☐ No costs allowed.  
☐ Costs allowed, payable by

---

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,  
Respondent on Review,

v.

CHRISTOPHER RAY LIPSKA, aka Christopher Ray Hare,  
Defendant-Appellant,  
Petitioner on Review.

Court of Appeals  
A175007

S070101

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MEAGAN A. FLYNN  
CHIEF JUSTICE, SUPREME COURT  
4/20/2023 8:44 AM

c: Daniel C Bennett  
Patrick M Ebbett

rtd

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

CHRISTOPHER RAY LIPSKA, aka Christopher Ray Hare,  
Defendant-Appellant.

Lane County Circuit Court  
19CR51891

A175007

**APPELLATE JUDGMENT**

Charles M. Zennaché, Judge.

Submitted on December 07, 2022.

Before Shorr, Presiding Judge; Mooney, Judge; and Pagán, Judge.

Attorney for Appellant: Daniel C. Bennett.

Attorney for Respondent: Patrick M. Ebbett.

**AFFIRMED WITHOUT OPINION**

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent.

☐ No costs allowed.

Appellate Judgment  
Effective Date: June 21, 2023

COURT OF APPEALS  
(seal)

jmr

**APPELLATE JUDGMENT**

---

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

**IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF  
LANE**

State of Oregon,	)	
Plaintiff	)	
	)	Case No.: 19CR51891
vs.	)	
	)	<b>JUDGMENT</b>
	)	
Christopher Ray Lipska,	)	Case File Date: 08/07/2019
Defendant	)	District Attorney File #: 039314338

**DEFENDANT**

True Name: Christopher Ray Lipska

Date Of Birth: 08/30/1972

State Identification No (SID): 8527587OR

Fingerprint Control No (FPN): JLAN119031032

Alias(es): Christopher Ray Hare

**HEARING**

Proceeding Date: 10/28/2020

Defendant appeared in person and was in custody. The defendant was represented by Attorney(s) ROBERT KAISER, OSB Number 083766. Plaintiff appeared by and through Attorney(s) JOANN OLIVINE MILLER, OSB Number 040915.

**COUNT(S)**

It is adjudged that the defendant has been convicted on the following count(s):

**Count 1 : Unlawful Presence Where Children Congregate**

Count number 1, Unlawful Presence Where Children Congregate, 163.476, Misdemeanor Class A, committed on or about 06/25/2019. Conviction is based upon a Court Verdict of Guilty on 10/23/2020.

**Incarceration**

Defendant is sentenced to the custody of County Jail, for a period of 6 month(s). Defendant shall receive credit for time served, considered served.

### **Sentencing Guidelines**

The Crime Severity Classification (CSC) on Count Number 4 is 5 and the Criminal History Classification (CHC) is A.

This sentence is pursuant to the following special factors:

- Pursuant to ORS 137.719.

### **Incarceration**

Defendant is sentenced to the custody of Oregon Dept of Corrections, for life imprisonment without the possibility of release or parole. Defendant is remanded to the custody of the Lane County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may not be considered by the supervisory authority for any form of program or reduction of his sentence including, but not limited to, earned good time, programs, or alternative sanction authorized by ORS 423.478

This sentence shall be concurrent with Count 3.

### **Count 5 : Encouraging Child Sexual Abuse in the First Degree**

Count number 5, Encouraging Child Sexual Abuse in the First Degree, 163.684, Felony Class B, committed on or about 07/01/2019. Conviction is based upon a Court Verdict of Guilty on 10/23/2020.

### **Sentencing Guidelines**

The Crime Severity Classification (CSC) on Count Number 5 is 8 and the Criminal History Classification (CHC) is A.

This sentence is pursuant to the following special factors:

- Pursuant to ORS 137.719

### **Incarceration**

Defendant is sentenced to the custody of Oregon Dept of Corrections, for life imprisonment without the possibility of release or parole. Defendant is remanded to the custody of the Lane County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may not be considered by the supervisory authority for any form of program or reduction of his sentence including, but not limited to, earned good time, programs, or alternative sanction authorized by ORS 423.478

This sentence shall be concurrent with Count 5.

### **Count 10 : Encouraging Child Sexual Abuse in the First Degree**

Count number 10, Encouraging Child Sexual Abuse in the First Degree, 163.684, Felony Class B, committed on or about 07/22/2019. Conviction is based upon a Court Verdict of Guilty on 10/23/2020.

### **Sentencing Guidelines**

The Crime Severity Classification (CSC) on Count Number 10 is 8 and the Criminal History Classification (CHC) is A.

This sentence is pursuant to the following special factors:

- Pursuant to ORS 137.719.

### **Incarceration**

Defendant is sentenced to the custody of Oregon Dept of Corrections, for life imprisonment without the possibility of release or parole. Defendant is remanded to the custody of the Lane County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may not be considered by the supervisory authority for any form of program or reduction of his sentence including, but not limited to, earned good time, programs, or alternative sanction authorized by ORS 423.478

## COUNTS DISPOSED WITH NO CONVICTION

Count # 2, Encouraging Child Sexual Abuse in the Second Degree is Acquitted.

Count # 7, Unlawful Contact with a Child is Acquitted.

Count # 8, Unlawful Presence Where Children Congregate is Acquitted.

Count # 9, Unlawful Contact with a Child is Acquitted.

If convicted of a felony or a crime involving domestic violence, you may lose the right to buy, sell, transport, receive, or possess a firearm, ammunition, or other weapons in both personal and professional endeavors pursuant to ORS 166.250, ORS 166.291, ORS 166.300, and/or 18 USC 922(g).

### Payment Schedule

Payment of the fines, fees, assessments, and/or attorney's fees noted in this and any subsequent Money Award shall be scheduled by the clerk of the court pursuant to ORS 161.675.

Payable to:

**Lane County Circuit Court**

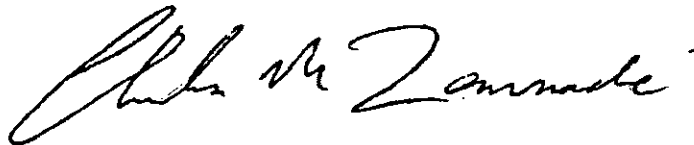
**125 E. 8th Ave.**

**Eugene, Oregon 97401 P: 541-682-4020 F: <http://courts.oregon.gov/Lane>**

Signed: 10/28/2020 04:27 PM

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signed:



**Charles M. Zennaché, Circuit Court Judge**



Case No. 19CR51891

DEFENDANT'S SENTENCING MEMORANDUM

CHRISTOPHER RAY HARE, a.k.a  
CHRISTOPHER RAY LIPSKA,

PD No. 19-03875

Defendant.

On October 23, 2020, Mr. Hare was convicted, after a bench trial, of three counts of encouraging child sexual abuse in the first degree, three counts of encouraging child sexual abuse in the second degree, and one count of unlawfully being in a location where children regularly congregate. The Court acquitted Mr. Hare of one count of encouraging child sexual abuse in the second degree (count 2), one count of unlawfully being in a location where children regularly congregate (count 8), and both counts of unlawful contact with a child (counts 7 and 9).

an escalating pattern of viewing sexually explicit images of children, becoming aroused by such material and then seeking out interactions with minors in the community.

\*\*This Superseding Indictment contains at least one offense subject to the presumptive life sentence for certain sex offenders upon third conviction per ORS 137.719\*\*

Verified Correct Copy of Original  
2/27/2020

sentence.” ORS 137.719(3)(a). Importantly, the statute requires separate sentencing proceedings, not simply separate criminal episodes or incident dates. That requirement suggests that the legislature, in writing this statute, was considering the defendant’s opportunity for rehabilitation. It would have been reasonable for the legislature to assume that an individual sentenced for different crimes in two separate proceedings had received punishment between the first and second convictions. Mr. Hare, however, had no opportunity for rehabilitation between his first and second convictions. The fact that Mr. Hare did not have a meaningful opportunity for rehabilitation between his first and second felony sex crimes supports the argument that a true life sentence would be disproportionate in this case.

Finally, the second *Rodriguez/Buck* factor – a comparison of the penalties imposed for other, related crimes – also leads to the conclusion that a true life sentence in this case would violate Article I, section 16. Any combination of felony sex convictions can trigger a presumptive life sentence under ORS 137.719(1). Thus, an individual could get a true life sentence for a third felony sex conviction for first-degree rape or sodomy, or for conduct, like Mr. Hare’s current convictions, that does not involve contact with the victim. Given the circumstances of this case, it would be constitutionally disproportionate for this Court to sentence Mr. Hare to life in prison for this conduct.

### **III. A LIFE SENTENCE WOULD VIOLATE THE EIGHTH AMENDMENT**

The Eighth Amendment forbids “cruel and unusual punishment.” It contains a “narrow proportionality principle” that “applies to noncapital sentences.” *Harmelin v. Michigan*, 501 US 957, 996-997 (1991); *Ewing v. California*, 538 US 11 (2003) (reaffirming the applicability of federal proportionality law); *see also Robinson v. California*, 370 US 660, 667 (1962) (applying the Eighth Amendment to the states via the Fourteenth Amendment). Whether a sentence is so disproportionate that it violates the

In reaching the conclusion that the true life sentence imposed by the trial court was not unconstitutionally disproportionate, the Court considered the information about the defendant's conduct described above, as well as the fact that the defendant had been convicted of the same type of conduct multiple times. The Court noted that the defendant's failure to "seriously confront his extensive history of other conduct targeted to the sexual exploitation of children" was of "considerable significance" given that he was sentenced pursuant to a recidivism statute. *Id.* at 11. The defendant had committed the crimes at issue in *Delp* within months after serving a lengthy prison sentence for the exact same offenses. *Id.*

This case is distinguishable from *Delp* in a few important ways. First, there is no evidence that Mr. Hare possessed the photographs at issue for any purpose other than his own use. He did not upload, copy, or distribute those images, and he was not in communication with other individuals involved in the sexual abuse of children, nor was he in communication with minors like the defendant in *Delp*. Second, although child pornography can all be appropriately described as "horrificing," the images at issue in this case do not rise to the level described by the state in *Delp*. Finally, unlike the defendant in *Delp*, who was repeatedly convicted of the same type of conduct, Mr. Hare's situation is different in that his first real experience with and unfettered access to the internet occurred upon his release from prison in 2019. Thus, Mr. Hare's current crimes are different in nature than his previous convictions.

Mr. Hare's previous sentencing history also suggests that a true life sentence is not appropriate in this case. Mr. Hare was charged with second-degree rape while awaiting trial on his charges for first-degree unlawful sexual penetration and first-degree sexual abuse. ORS 137.719(1) applies only if the defendant has been sentenced for felony sex crimes at least two times prior to the current sentence. For purposes of that statute, "sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one

sexual contact or sexual violence”; the defendant’s behavior “was not aggressive in the sense that he actively pursued victims or attempted to have physical contact with them.” *Id.* at 386.

This case is like *Davidson* in that Mr. Hare’s new convictions do not involve any attempt to have physical contact with the victims. Furthermore, unlike the defendant in *Davidson*, Mr. Hare has exhibited an understanding of the socially unacceptable nature of his attraction toward children. Officer Hamilton, Mr. Hare’s parole officer, and Eugene Police Department Officer Kidd testified at trial about Mr. Hare’s conversations with them about his ongoing struggle with his attraction to children and his efforts to interrupt problematic thought processes. The evidence in this case demonstrates that Mr. Hare was forthcoming about his struggles, and even his criminal conduct.

In *Delp*, the Court of Appeals considered, and ultimately upheld, the constitutionality of a true life sentence for a defendant whose qualifying felony sex convictions were for possession of child pornography and first-degree encouraging the sexual abuse of a child. 297 Or App 1. At sentencing, the state presented information that the defendant had “uploaded, copied, and distributed child pornography using his smartphone”; that he had admitted to “communicating with people he believed may be engaged in contact sexual abuse of children”; that he had “communicated with people he believed to be minor girls and sometimes requested and received sexually explicit images from them”; and that he had “admitted to participating in internet chat rooms and using a text messaging application on his smartphone to communicate with other people to exchange child pornography.” *Id.* at 5-6. The state described the pornography at issue in *Delp* as “‘beyond horrifying,’ showing children ‘being raped by adults . . . [and] children being forced to do sexual[ ] things to each other, being directed by other offenders within the photos themselves.’” *Id.* at 10-11.

proportionate to the offense, the court considers three factors: “(1) A comparison of the severity of the penalty and the gravity of the crime; (2) a comparison of the penalties imposed for other, related crimes; and (3) the criminal history of the defendant.” *State v. Rodriguez/Buck*, 347 Or 46, 58 (2009). When the sentence is imposed pursuant to a recidivism statute, however, the first and third factors “overlap in comparing the severity of the penalty and the gravity of the crimes that gave rise to the repeat offender sentence.” *State v. Althouse*, 359 Or 668, 684 (2016).

Under the first and third *Rodriguez/Buck* factors, in considering an as-applied challenge to a sentence under ORS 137.719(1), “the court assesses the severity of the penalty against the gravity of the current offense *and* the gravity of the defendant’s criminal history.” *State v. Delp*, 297 Or App 1, 9 (2019). Here, although Mr. Hare’s convictions from 1994 are quite serious, the convictions at issue are less serious in that they do not involve sexual contact with the victims of his crimes.

In *State v. Davidson*, 360 Or 370, 391 (2016), the Oregon Supreme Court concluded that the true life sentence imposed by the trial court for the defendant’s third conviction for felony public indecency was unconstitutionally disproportionate. The Court reached that conclusion despite recognizing that “the circumstances of defendant’s past public indecency offenses demonstrated that they caused harm to others, and that they often had at least the potential to cause even greater harm due to the presence of children nearby.” *Id.* at 384. With respect to the new public indecency crimes at issue in that case, the Court noted that the new convictions were of even greater concern in light of his history because they implied that the defendant “has little control over his behavior or understanding of the socially unacceptable nature of his conduct.” *Id.* at 385. Even so, the Court concluded that the defendant’s behavior did not give rise to “harm of the same magnitude as being specifically and personally subjected to unwanted physical

died and is beyond all harm. In other words, the crimes of possession and duplication will often occur under circumstances where the person depicted in the image cannot be harmed by its possession.

Therefore, in order for the state to prove the existence of a victim of a crime such as encouraging child sexual abuse, the state must prove the victim was still alive – that is, still capable of being harmed – when the crime was committed. When, as here, the crime at issue is the duplication and possession of images – not the creation of those images – the existence of a living victim is something the state may not be able to prove. Indeed, the state did not, and likely cannot, prove the existence of living victims in this case.

For those reasons, this Court should merge the three counts of first-degree encouraging child sexual abuse, and the three counts of second-degree encouraging child sexual abuse.

## **II. A LIFE SENTENCE WOULD VIOLATE ARTICLE I, SECTION 16 OF THE OREGON CONSTITUTION**

Under ORS 137.719, the presumptive sentence for a felony sex crime is life in prison without the possibility of parole “if the defendant has been sentenced for sex crimes that are felonies at least two times prior to the current sentence.” ORS 137.719(1). Mr. Hare has previous convictions for first-degree unlawful sexual penetration, first-degree sexual abuse, and second degree-rape, all from 1994. Those prior convictions make him statutorily eligible for a true life sentence; however, this Court should not impose such a sentence because it would violate the Oregon Constitution.

Even if a sentence is authorized by statute, it is nevertheless unlawful if it does not pass constitutional muster. Article I, section 16, of the Oregon Constitution provides that “all penalties shall be proportioned to the offense.” In determining whether a particular penalty is

When Reeves was re-sentenced after *Reeves I*, he argued for the first time that even assuming different children were depicted in the fifteen counts of which he was convicted, they could not be victims unless they were capable of being harmed at the time of the crime of conviction (that is, when the images were downloaded). The trial court rejected that argument, and the case returned to the Court of Appeals. After the case had been under advisement for more than a year after oral argument, the Court of Appeals declined to decide the issue because it was bound by the "law of the case." That is, because the issue of the number of victims had already been appealed, the law of the case prevented the court from reaching the issue. Consequently, the issue of whether the state has to prove the existence of living victims at the time of the duplication and possession remains an open one.

A victim must be capable of being harmed. Actual harm is not required – a person can be a victim of an attempt crime – but there must be at least the possibility of harm. ORS 131.007. *See State v. Glaspey*, 337 Or 558, 565 (2004) (the victim of a crime is, ordinarily, "a person who suffers harm that is an element of the offense"). An imaginary person could not constitute a victim. Similarly, a person who died before the crime was committed is incapable of being harmed, because a dead person is beyond our capacity to harm.

The nature of child pornography – as is true with photographs and video in general – is that the same images that people look at today are, theoretically, the same images that they will be looking at one hundred years from now. Some images of child pornography that can be found on the internet were originally filmed decades ago on 8mm cameras. The inevitable consequence of this indisputable fact is that pornographic images will be downloaded and possessed long after the person depicted in the image has



The three counts of first-degree encouraging and the three counts of second-degree encouraging are charged under the same statutory provision. The state charged all three counts of first-degree encouraging as

“unlawfully and knowingly possess[ing] a record in visual recording . . . of sexually explicit conduct involving a [child] with the intent to duplicate the record in visual recording while knowing or being aware of and consciously disregarding the fact that creation of the visual recording of sexually explicit conduct involved child abuse.”

The three counts of second-degree encouraging were charged as

“unlawfully, knowingly and for purposes of arousing and satisfying defendant’s sexual desires, possess[ing], control[ing] or knowingly access[ing] [the image] with the intent to view a visual recording of sexually explicit conduct involving a child while knowing or being aware of and consciously regarding the fact that the creation of the visual recording constituted child abuse.”

Thus, the three counts of first-degree and the three counts of second-degree encouraging violate the same statutory provisions.

Finally, ORS 161.067(2) should not preclude merger in this case because although the three images at issue in this case are of different children, those children are not necessarily “victims” under the law. In *State v. Reeves*, 250 Or App 294 (2012) (*Reeves I*), the Court of Appeals held that the child depicted in an image of child pornography is the victim, as a matter of law.<sup>1</sup> Given three different children depicted in the three different images at issue in this case, separate victims would permit the trial court to impose the same sentence, even assuming one criminal episode. But the *Reeves* Court left unanswered a potential limitation to that holding, which it acknowledged – but still did not reach – in *State v. Reeves*, 273 Or App 37 (2015) (*Reeves II*).

<sup>1</sup> Defendant also submits that *Reeves I* was incorrectly decided, because the thrust of the law was the “encouragement” of child sexual abuse, that is, the number of future victims arising out of the existence of a market for child pornography, and not the children in the images, who were the victims of other crimes not committed by the person who merely downloads the images. However, Defendant recognizes that this court is bound by *Reeves I*, and therefore only preserves this objection in case of future appellate review.

## LEGAL ARGUMENTS

### I. MERGER OF COUNTS 3, 5, AND 10 AND COUNTS 4, 6, AND 11

The anti-merger statute provides that “[w]hen the same conduct or criminal episode violates two or more statutory provisions and each provision requires proof of an element that the others do not, there are as many punishable offenses as there are separate statutory violations.” ORS 161.067(1). For a single criminal act or episode to give rise to more than one statutory violation, three requirements must be satisfied: “(1) the defendant must have engaged in acts that are ‘the same criminal conduct or episode’; (2) the defendant’s acts must have violated two or more ‘statutory provisions’; and (3) each ‘statutory provision’ must require ‘proof of an element that the others do not.’” *State v. Medley*, 239 Or App 25 (2010). Thus, multiple guilty verdicts must “merge if all of the elements in one provision are subsumed into the elements of the other provision.” *State v. Noe*, 242 Or App 530, 532 (2011). That is not true, however, when there are multiple victims of the defendant’s criminal conduct – “[w]hen the same criminal conduct or criminal episode, though violating only one statutory provision involves two or more victims, there are as many separately punishable offenses as there are victims.” ORS 161.067(2).

Here, Mr. Hare’s three convictions for first-degree encouraging child sexual abuse merge, and the three convictions for second-degree encouraging child sexual abuse merge. Mr. Hare’s convictions for first- and second-degree encouraging are part of the same criminal episode because Mr. Hare possessed all of the photos at the same time. Oregon has long recognized that “the fact of possession as a criminal act is of a continuing nature.” *State v. Boyd*, 271 Or 558, 571 (1975). “If a defendant is charged with the possession of drugs, some of which had been acquired at one time and the rest at another time, it would seem clear that he would be entitled to object to multiple prosecutions.” *Id.* The fact that the contraband is of a different nature does not merit different treatment. *See id.*

Eighth Amendment depends on three factors: “(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.” *Solem v. Helm*, 463 US 277, 292 (1983) (holding unconstitutional “a life sentence without possibility of parole for a seventh nonviolent felony”); *but see Hutto v. Davis*, 454 US 370 (1982) (consecutive 20-year prison terms for possession with intent to distribute nine ounces of marijuana and distribution of marijuana did not violate proportionality principle).

The penalty mandated by ORS 137.719 is disproportionate as applied to defendant. As argued above, defendant’s true-life sentence is more severe than sentences for other combinations of much more severe crimes, and his particular conduct does not fall at the severe end of the conduct covered by ORS 137.719. Because the true-life sentence in this case is disproportionate, application of the penalty to defendant violates the proportionality requirement of the Eighth Amendment.

### CONCLUSION

This Court should conclude that counts 3, 5, and 10 merge, and counts 4, 6, and 11 merge. The Court should also conclude that a life sentence without the possibility of release or parole, pursuant to ORS 137.719, would violate Article I, section 16, of the Oregon Constitution and the Eighth Amendment to the United States Constitution.

DATED: October 27, 2020

/s/ Robert B. Kaiser

Robert B. Kaiser (083766)  
Attorney for Defendant  
RKaiser@lanepds.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, concurrent with electronic filing of the foregoing original document, a true copy was electronically served on the Lane County District Attorney.

DATED: October 27, 2020

/s/ Robert Kaiser

Robert Kaiser (083766)

rkaiser@lanepds.org

Public Defender Services of Lane County, Inc.

1143 Oak Street, Eugene, OR 97401-3518

541-484-2611

**Additional material  
from this filing is  
available in the  
Clerk's Office.**