

STATE OF MINNESOTA  
COUNTY OF ANOKA

DISTRICT COURT  
TENTH JUDICIAL DISTRICT  
Case Type: Civil Commitment

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County File No.: 02-PR-19-469

In the Matter of the Civil Commitment of:

Mark Steven Wallace,  
Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER FOR  
COMMITMENT**

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This matter came on for an evidentiary hearing before the Honorable Thomas M. Fitzpatrick, District Court Judge, on November 12, 13 and 14 of 2019 upon a petition for judicial commitment alleging Respondent is a sexually dangerous person and a sexual psychopathic personality.

The Petitioner was represented by Lisa Jones, Assistant Anoka County Attorney. The Respondent filed a waiver of his appearance prior to the hearing, and the court excused his presence based upon his request. Respondent was represented by court-appointed counsel, Jennifer Thon, esq., Jones Law Office.

Upon the testimony and evidence presented, upon the files, records, and proceedings, the court makes the following Findings of Fact, Conclusions of Law, and Order:

**Findings of Fact:**

1. A petition was filed on August 5, 2019, alleging the Respondent is a Sexually Dangerous Person and a Sexual Psychopathic Personality pursuant to Minn. Stat. § 253D.02. The petition requests that the Respondent be indeterminately committed to the Minnesota Sex Offender Program located at Moose Lake, Minnesota and within the Minnesota Security Hospital at St. Peter.
2. Dr. James H. Gilbertson was appointed by the court as the first court appointed examiner. Dr. Gilbertson submitted a written report which was filed on October 22, 2019.
3. Respondent elected to have the court appoint a second examiner, and Respondent

selected Dr. Anne Pascucci as the second examiner. Dr. Anne Pascucci submitted a written report which was filed on November 11, 2019.

4. The court received the following exhibits:
  - a. Exhibit 1 – DOC referral documents
  - b. Exhibit 2 – Dr. Michael Thompson’s report
  - c. Exhibit 3 – Washington County Criminal Sexual Conduct March 31, 1987
  - d. Exhibit 4 – Ramsey County Criminal Sexual Conduct April 9, 1987
  - e. Exhibit 5 – Attempted Criminal Sexual Conduct May 19, 1987
  - f. Exhibit 6 - Missing Person and other uncharged offenses
  - g. Exhibit 7 – Theft August 22, 1995
  - h. Exhibit 8 – Pictures of AS injuries
  - i. Exhibit 9 – Theft October 19, 1998
  - j. Exhibit 10 – Marijuana Grow January 10, 2000
  - k. Exhibit 11 – Theft by Swindle 2007, 2008
  - l. Exhibit 13 – Theft by Swindle November 27, 2009
  - m. Exhibit 14 – Theft by Swindle March 6, 2009
  - n. Exhibit 15 – Robbery April 9, 2009
  - o. Exhibit 16 – Department of Correction Records
  - p. Exhibit 18 – Fifth Degree Controlled Substance September 26, 2019
  - q. Exhibit 19 – Theft May 8, 2013
  - r. Exhibit 20 – Fifth Degree Controlled Substance August 7, 2014
  - s. Exhibit 21 – Domestic Assault November 11, 2015
  - t. Exhibit 22 – Violation of Domestic Abuse No Contact Order November 18, 2015
  - u. Exhibit 23 – Domestic Assault January 15, 2016
  - v. Exhibit 24 – Violation of Domestic Abuse No Contact Order January 27, 2016
  - w. Exhibit 25 – Burglary August 4, 2016
  - x. Exhibit 26 – Violation of Domestic Abuse No Contact Order August 9, 2016
  - y. Exhibit 27 – Kidnapping and Stalking August 12, 2016
  - z. Exhibit 28 – Third Degree Assault March 25, 2017
  - aa. Exhibit 29 – False Information to Police April 6, 2014
  - bb. Exhibit 30 – Domestic Disturbance July 27, 2015

- cc. Exhibit 31 – Photos from Kidnapping
  - dd. Exhibit 32 – Images from Respondent’s phone
  - ee. Exhibit 33 – Transcripts of AS Interviews
  - ff. Exhibit 34 – Sex Trafficking Investigation
  - gg. Exhibit 35 – State of MN Department of Corrections Investigation
  - hh. Exhibit 35 part I –Audio CD of State of MN Department of Corrections Investigation
  - ii. Exhibit 36 – Dr. James Gilbertson’s report
  - jj. Exhibit 37 – Respondent’s response to Discovery Requests
  - kk. Exhibit 38 – Dr. Anne Pascucci’s report
  - ll. Exhibit 39 – Transcript of Scott Halvorson in initial commitment hearing
  - mm. Exhibit 40 – Static – 99R Coding Rules
  - nn. Exhibit 100 – Less Restrictive Alternative Plan of Respondent
  - oo. Exhibit 101 – Minnesota Department of Human Services Direct Care and Treatment, Minnesota Sex Offender Program
  - pp. Exhibit 102 – Client Provisional Discharge Management and Supervision
  - qq. Exhibit 103 – Scott Halvorson Transcript in Commitment Appeal Panel hearing
  - rr. Exhibit 104 – Minnesota Department of Corrections ReEntry Review Report
  - ss. Exhibit 106 – Court and Police Records related to AS
5. The court received testimony from the following witnesses: KK, victim of the April 1987 criminal sexual conduct conviction; William Snyder, retired law enforcement who investigated the homicide of HL; Det. Kevin Navara who investigated the homicide of HL; Dr. James Gilbertson, court-appointed examiner; VK victim of uncharged physical and sexual assaults by Respondent; SS, VK’s sister who was drugged by Respondent; Det. Paul Kroshus of the Woodbury Police Department who investigated sex trafficking of AS; AS, victim of kidnapping, stalking, physical and sexual assaults by Respondent; Corey Kohan, supervisor of Anoka County Corrections and Dr. Anne Pascucci, second examiner selected by Respondent.
6. The Court finds that Respondent is 57 years old, with his date of birth being July 29, 1962.
7. Respondent was born to an intact family and has three full siblings. Respondent reported

that he had a positive relationship with his mother until her death in 2005.

8. Respondent was married once and had a 14 year romantic relationship with a different woman after his divorce. He has four children. He has lived with a partner for two years or longer.
9. Respondent has a high school diploma and holds an AA degree. He has primarily been employed in “the construction trades at a level that suggests some success” in the community. Within prison, Respondent demonstrated a favorable work history. Respondent did not serve in the military.
10. **Respondent was charged with criminal sexual conduct in Washington County District Court file K6-87-1348, after committing an offense on March 31, 1987.** MLK, a 16-year-old female, received a call from “Bob” on 3/31/87 at 1500 hours. “Bob” asked if she was still looking for employment. “Bob” said a friend of his, Respondent, told him that MLK was looking for a job. 3-000001.
11. MLK said 2 weeks earlier she and a friend had been at the Cedarhurst Mansion apartments in Cottage Grove and were introduced to Respondent. 3-000001
12. “Bob” asked if she wanted a receptionist job, she said yes, and he said he would phone back at 1830 to confirm an interview with a friend who owns a t-shirt shop. “Bob” called and told her to meet him at 1900 at Kentucky Fried Chicken. 3-000001
13. Respondent picked her up and told MLK that “Bob” was bowling, so “Bob” sent Respondent to pick up MLK. 3-000001
14. Respondent drove MLK to Cedarhurst Mansion in Cottage Grove. She sat on a sofa in the porch adjacent to the apartment. Respondent offered her champagne, and MLK declined. 3-000002
15. Respondent asked her to do a stretching exercise to see how high she could reach. Respondent asked her to sit in a recliner. Respondent pushed the back of the recliner placing her in a prone position at which time she immediately sat up. Respondent pushed her back and she sat up again. 3-000002
16. Respondent said he wanted to look under the chair one more time and pushed it back again. He then got on the recliner facing her face to face and produced a buck knife with a 4-inch blade and held it underneath her nose stating he was going to kidnap her. 3-000002

17. Respondent took a piece of duct tape off a kitchen chair which was next to the recliner and placed it over her mouth. He grabbed a second piece of duct tape from the kitchen chair and placed it over her eyes. There were two kitchen chairs, one on each side of the recliner. 3-000002
18. Respondent opened up a hide-a-bed and had MLK lay on it face down. 3-000002
19. Respondent tied all four of MLK's extremities to the framing of the hide-a-bed. Respondent used stocking to tie her up. On her right wrist he used cord material.
20. Once MLK was spread eagle, Respondent removed the tape from her mouth and put a stocking in her mouth. Respondent put a blanket over MLK and turned on a portable heater and turned on radio. 3-000002
21. While on the bed MLK indicated she had to call her grandmother. Respondent had a blue princess style phone and brought the phone into the porch and allowed her to call.
22. MLK talked with her 14-year-old sister and told her she was at a friend's house.
23. While MLK was on the bed Respondent told her that three other girls had been kidnapped in Hennepin County and there was a plane waiting at the airport private chartered that would take her and three other girls to Las Vegas where they would be prostituted. 3-000002
24. Respondent said he wanted to keep MLK to himself and he was going to talk to "Bob" about that. 3-000002
25. Around 11:00 pm. Respondent said "Bob" had arrived. Respondent left the room and later a man with loud footsteps and a deep, gravelly voice came in and said, "Let's see what Mark is keeping for himself." The man reached underneath MLK's stomach pulled her pants open, grabbed the back of her pants and underwear and slid them down her legs. He reached up under her blouse tried to unhook her bra, found there were not snaps on the back, then pulled on it and broke it and removed it. 3-000002
26. The man got on top of her then had nonconsensual anal intercourse with MLK. The assault lasted less than 5 minutes. After the assault "Bob" put the blanket back and left her pants down.
27. Respondent came into the porch area and told MLK he had a verbal disagreement with "Bob" about him sexually assaulting her and said he had a weapon pointed at his head by "Bob", but he had won the argument and Respondent would be able to keep MLK

- for himself. 3-00002-3
28. MLK believed there was no second person, that Respondent was also “Bob”.  
MLK said she needed to return otherwise her grandmother would be concerned.
29. Respondent agreed to bring her back to her residence in St. Paul. While driving her back  
Respondent said if MLK told anybody what happened he will not only kill her, but he  
will kill her family also. 3-000003
30. Respondent stopped at Cypress and Maryland and told MLK to get out. 3-000003
31. Once out of the car MLK removed the tape from her eyes and saw Respondent’s vehicle  
speeding away.
32. MLK went home and told her sister what happened. Her grandma came into her  
bedroom and she hid her face in a pillow as she talked to her grandma so she couldn’t  
see the tape marks on her face. The next day MLK told her Grandma what happened.  
MLK’s grandma reported this to law enforcement.
33. Respondent was charged with criminal sexual conduct in the third degree. 3-0000015
34. On August 12, 1988, Respondent was convicted of criminal sexual conduct in the third  
degree and was sentenced to 50 months. 1-000035
35. **Respondent was charged with Criminal Sexual Conduct in Ramsey County  
District Court file 4147238 after an offense he committed on April 9, 1987.**
36. On April 9, 1987, Victim KK was waiting for a bus in the St. Paul midway area. 4-  
000007
37. The victim KK credibly testified that Respondent approached her while she was at the  
bus stop. She left work early that day as she was not feeling well.
38. According to reports at the time of the offense, Respondent told KK his name was “Jim”  
and he was sorry, but he just got out of St. Peter Mental Hospital. He also told her he  
lived at 1647 Maryland and she could call him at 227-6731. 4-000016
39. Respondent put a knife to the throat of KK. He forced her into a ditch and removed her  
shoelaces and used them to tie her hands behind her back. 4-000014
40. Respondent took off her sock and put it in her mouth and again put masking tape over  
her eyes and mouth. 4-0000014
41. Respondent directed her out of the ditch and took her to a group of small trees. He  
forced her to the ground face down and removed her pants and underpants. He took

another pair of shoelaces from a brown paper bag he had been carrying and tied her legs to trees in a spread-eagle position. 4-000014

42. KK testified that Respondent cut her jacket.
43. Respondent took what was described as a “foamy, oily stinky” substance from a spray can and rubbed it on her anus, then inserted his penis into her anus without consent. 4-000014
44. Respondent held a knife to KK’s throat and back and told her if she screamed, he would kill her. He then fled on foot. 4-000014
45. KK freed herself and then left the area looking for a phone. 4-000014
46. KK was brought to the St. Paul Ramsey Hospital for treatment. 4-000009
47. Officers went to the crime scene and found the following evidence: masking tape, shoestring package, shoestring wrapper, shoestring (white) tied onto two different trees, red comb, brown shoestring on another tree and on the ground, and a white plastic cap. 4-000010
48. Respondent admitted tying up KK and having intercourse while she was facing away from him. 5-000018-19
49. Respondent was convicted of criminal sexual conduct in the first degree and sentenced to 60 months on 8/18/1988 4-000004
50. **On May 19, 1987 Respondent committed acts with the intent to commit criminal sexual conduct.**
51. On May 19, 1987, KJ called law enforcement and said she had been getting phone calls from someone who said his name was “Steve Wright” and that he worked for KQRS radio station. 5-000002
52. “Steve Wright” said he wanted to interview KJ for a job on video TV show. 5-000002
53. “Steve Wright” turned out to be Respondent, who had stolen KJ’s National Education Center Confidential Questionnaire, which included KJ’s contact information. 5-000006
54. A police officer “decoy” went in place of KJ to meet Steve Wright for the interview. 5-000002
55. Respondent met the decoy and said his name was “John” and that Steve sent him to meet her. Respondent had a duffle bag with him and he put it in the car. 5-000002
56. Respondent directed the decoy where to drive, taking side roads. At one point,

- Respondent said he thought they were being followed. 5-000003
57. Respondent said KQRS was going to do a show like MTV and he would take her to C&C productions for an interview. 5-000002
58. The decoy told Respondent she was running out of gas, so they stopped for gas. She went in to pay and called for backup because she believed she was going to be raped. 5-000003
59. Law enforcement arrived and Respondent was frisked, and officers found marijuana in his pocket. 5-000003
60. Law enforcement searched Respondent's duffle bag and found a blanket, towel, 2 carrots, 1 avocado, 1 razor, 1 bottle of southern comfort, doubled plastic baggie containing 2 paper towels soaked with an unknown liquid, 7.5 inch blade knife, and a roll of black tape. 5-000003
61. Officers later found a small terrycloth sock in Respondent's left rear pants pocket and a pair of white (new) shoelaces. 5-000004
62. Respondent admitted he intended to rape KJ and that he had broken into a car, taken records and called KJ. 5-0000010-11
63. **On January 12, 1993, Hang Lee, DOB: 10/9/1975, was reported missing by her parents to the St. Paul Police Department.**
64. HL's brother, KL said HL had a job interview with a guy that HL's friend NL worked for. 6-000007
65. KL saw NL in the cafeteria the next morning, she turned red and looked away. KL asked where HL was. NL told KL that she did not know where HL was. 6-000007
66. NL told investigators she worked for Respondent and he asked her if she knew anyone who wanted to work for him. 6-000010
67. NL called HL to see if she and Respondent could pick her up for an interview. It was snowing but Respondent had a truck that could make it through. They picked up HL and went back to Respondent's office where he interviewed HL. 6-000010
68. After the "interview" Respondent asked NL and HL if they wanted to go to the casino. 6-000010
69. Respondent drove them home in a white car. Respondent dropped NL off first.
70. Later, Respondent told NL that HL had him drop her off by Wongs Café where she



worked and he was not going to hire HL. 6-000010

71. NL quit working for Respondent when she learned he was the suspect in HL's disappearance.
72. Police interviewed JM who had been living on and off with Respondent for 10 months prior to this interview on 9/26/12. JM told officers that a few months prior to this interview on 9/26/12, he and girlfriend JJ were having beers with Respondent at a house in Montrose. Respondent was getting "tipsy" when he told them he had taken two Asian girls on a job interview. After the interview was over, he dropped one of the females off and then tried to have sex with the other Asian female. Respondent said he ended up raping her and because she was going to go to the police, Respondent had to kill her. 6-000020
73. Law Enforcement officers, William Snyder and Kevin Navara both testified regarding their investigation of this murder. Both indicated Respondent is the only suspect. Both interviewed many women who revealed they were also victims of Respondent's sexual assaults.
74. Both investigators indicated the disappearance of HL fits the pattern of Respondent with the lure of a job interview.
75. Kevin Navara testified regarding the use of cadaver dogs to find HL's body. HL's body has never been found, and Respondent has not been charged with the murder of HL.
76. One of the victims interviewed by law enforcement when investigating the death of HL was NL. NL is HL's friend who was present for part of the evening when Respondent was going to interview HL for a job.
77. NL worked for Respondent 1-2 times a week. 6-000011. Respondent owned a business with a business partner. The business was called WW Design.
78. One day NL came into the office and there were chemicals. The fumes gave her a headache. She told Respondent she wanted to call her parents to come get her.
79. Respondent had a drink already out when she came to work. he told her to have a drink first when she asked to call her parents. 6-000011, 6-000040
80. NL drank what Respondent gave her and became violently ill and threw up after taking the drink. Respondent gave her a blanket. 6-000011
81. NL felt she was "zoning," and was out of it but kept telling Respondent she needed to

call her dad. Respondent told NL his wife was a nurse and she would be fine. 6-000011, 6-000040

82. When NL recovered, Respondent's wife was there and gave her a couple of pills, told her it was the fumes and she would be fine. 6-000011, 6-000040

83. **Another person interviewed by the investigators in the HL case was VK who has a child with Respondent. VK also credibly testified.**

84. VK met Respondent when she lived with a friend of her father's during her senior year of high school. Respondent was kind at first and told her he would protect her. (see also Ex. 6-000022) They met around Halloween in 1982 and by Christmas of 1982 Respondent's demeanor changed towards VK.

85. VK testified that Respondent called her names such as "slut" and the "C" word. Respondent controlled what VK wore, who she could talk to and where she could work.

86. Respondent and VK have a child together. Respondent would threaten to take the child away from VK.

87. VK testified that Respondent hit and punched her on many occasions. Once, Respondent punched VK so hard she believed she had broken ribs. She sought medical attention but was under strict orders from Respondent not to tell how the injury happened.

88. VK testified that Respondent left her in the middle of a field at nighttime. He drove off but came back later convincing VK he was "rescuing" her.

89. VK testified that when their child was approximately one year old, VK came home one day and her sister SS was there. VK opened the bathroom door and found Respondent kissing SS. Respondent and SS left and Respondent didn't come back until 6:00 am the next day. Respondent and SS checked into a hotel. VK never asked her sister about it due to friction in the family.

90. VK testified that, in 1984 or 1985, when she was no longer living with Respondent, he coaxed VK to come to the apartment under the pretext that he was arranging a meeting between her and her sister to patch things up. Instead, Respondent drugged her soda and raped her. 6-000022

91. VK testified that in 1985 after their relationship ended, VK brought their young son to his mother's home for a visit. During this visit, Respondent sexually assaulted her by throwing her into a bedroom and tying her with a belt from a robe to a bed, face up,

spread eagle. He put a knit hat over her head and put tape over her mouth. He penetrated her mouth and vagina with his penis and a cucumber without consent. VK did not report this assault. 6-000022

92. In June of 1985 Respondent followed her in his vehicle and began rear-ending her car trying to run her off the road. Later on, he slashed her tires and poured molasses in her gas tank. Respondent broke into her home and stole her TV. She didn't report this theft to police, but did obtain a restraining order. 6-000024
93. VK testified that Respondent has contacted her as recently as 2016 requesting her social security number. Respondent has used their son's social security number for employment/taxation purposes.
94. **SS testified. She is the sister to VK.** One day Respondent called SS asking her to come to the apartment he shared with VK asking for help with VK. Respondent had prepared a "cocktail" for SS and was persistent about her drinking it. SS does not remember much from that evening. She woke up in a hotel room and had dried vomit on her clothes.
95. SS testified that Respondent told her she should probably leave town because of what happened.
96. **Another victim the investigators of HL interviewed was an ex-wife of Respondent, WB-S.**
97. WB-S met Respondent through her cousin around the time frame of 1987. 6-000030
98. Respondent treated her well when dating, but once married he tore her down. 6-000030
99. WB-S graduated high school in 1987 and believes they got married close to that time. Respondent went to prison shortly after they married and she didn't know why, but he told her he was framed for rape. 6-000030
100. Respondent disappeared when the HL allegations came out and she was left to deal with searches, etc. Respondent would call every once in a while but wouldn't tell her where he was staying. After the incident with HL, WB-S reported Respondent got "psycho" and weird. 6-000031
101. WB-S remembers PM. PM lived with Respondent at time of HL's disappearance. 6-000025
102. WB-S thought it was weird that PM was at their studio apartment because it was too

- small to need cleaning. 6-000031
103. WB-S remembers helping PM when she was likely drugged. 6-000031
104. WB-S was not a nurse, she was a nurse assistant.
105. WB-S saw PM vomiting in the toilet. Her overalls were just over her hips. WB-S said PM only had a bra on and had nothing on over the overalls. WB-S thought it was weird but knew not to question Respondent about it. 6-000031
106. One night WB-S came home and found a camera hooked up and on for viewing. Respondent was sleeping. WB-S took the tape into another room and viewed it. It was Respondent having sex with a young white girl and the girl had a lot of makeup on. At one point WB-S had possession of this video. 6-000033
107. WB-S looked at their entertainment system and observed a hole cut in where Respondent could put the camera for concealed taping. 6-000033
108. One time Respondent made her have 3 way sex but WB-S stopped it and ran into the bathroom. She could not tell who the girl was, the room was dark and didn't see the girl. It happened in their new apartment, the one they moved into after the search warrant was executed on the old one. 6-000033
109. Respondent was physically abusive with WB-S: he bit her and choked her so hard one time that she thought he was going to kill her. WB-S called her father and had him take her to Colorado. 6-000034
110. WB-S moved to Colorado because Respondent stalked her when they separated. 6-000030
111. Respondent stalked her all the way to Colorado where her car was stolen. 6-000035
112. **Another victim the investigators of HL's disappearance interviewed was PM.** PM was hired as a house cleaner for the small studio apartment where Respondent and his wife, WB-S resided.
113. PM did not know HL, but she did know NL (the friend who was present when HL went on a job interview with Respondent, the night HL disappeared).
114. PM was in Canada for a couple months when she called NL because she needed money. 6-000025
115. NL told her Respondent could help them out financially. PM eventually moved in with Respondent. 6-000025

116. The first time PM met Respondent was for a job interview sometime in 1993. 6-000025
117. Respondent picked PM up at a gas station. Before she got into the car with Respondent, PM said goodbye to her father. Respondent asked her if that was an undercover cop. 6-000026
118. Respondent took PM to his office and said the job did not come through. When the job did not go through, Respondent offered PM a Mountain Dew and put Tequila in it. Respondent told her he needed to see if PM could hang with the boys. 6-000028-29
119. Respondent talked of PM living with him and said he would find her a job in the future. Respondent's wife WB-S bought her some clothes. PM received \$20 a week allowance. 6-000026
120. PM blacked out and woke up on the toilet with her pants down. She was out for 2-3 hours. 6-000029
121. Respondent told PM she got sick and he found her on the toilet and left her alone. 6-000029
122. Respondent kept PM and NL separate—he didn't want them talking to one another. PM tried to call NL, but NL always gave excuses about why she couldn't talk to PM. 6-000028
123. PM felt Respondent tape recorded her, because he seemed to know things. PM felt that someone was watching her sleep at times.
124. Respondent told PM he wanted to recruit young girls and have them work for him in a strip club. 6-000026
125. Respondent asked PM to give his wife WB-S massages. 6-000026
126. Respondent tried to get PM to be a model and had her pose in lingerie, Respondent told PM that NL was doing the same thing.
127. PM did have sex with Respondent but he "used psychology" on her. Respondent would tell PM if she wanted more money, she would "have to do this." She was afraid of Respondent. PM was 19. They had sex three times. Respondent asked PM for a threesome with his wife. 6-000029
128. NL called PM one day and told her to get out of there explaining about the disappearance of HL. PM moved out, but the day she packed Respondent got angry. He eventually changed his tone and said he would drive her. On the way to drop PM off at her cousin's

he took a different route and asked if anyone knew she was coming. 6-000027-28

129. The Court notes that Respondent has never been arrested or charged with any offense related to HL, and thus, gives this evidence limited weight.
130. **Respondent was charged with stalking, kidnapping and Fifth Degree controlled substances in Washington County District Court file 82-CR-16-3409.**
131. Reports were received related to this offense and AS credibly testified.
132. On August 13, 2016 Woodbury Police Department was patrolling through the parking lot of Key Inn Motel and ran the license plate of a vehicle. The plate had a KOPS (Keeping Our Police Safe) alert indicating a Domestic Abuse No Contact Order (DANCO) prohibiting Respondent from having contact with AS. The officer also learned Respondent had an outstanding warrant at that time. 27-00003
133. The Woodbury officer called the Anoka County Sheriff's Office (ACSO) and was informed the deputy had recently stopped the same vehicle; Respondent and AS were in the vehicle together despite an active no contact order. ACSO reported they had tried to arrest Respondent, but he ran from the scene. 27-000018-19
134. The Woodbury police officer found a room registered to AS and knocked. AS said she was getting out of the shower and needed to get dressed. Officers opened the door, but the swing lock was in place. An officer could see the bed moving up and down and he told AS that he knew Respondent was hiding under the bed. 27-00003
135. AS looked "frozen in fear". Officers kicked the door three times which broke the lock and swung the door open. Respondent ran toward the door. Officers drew their firearms and ordered Respondent to the ground. 27-00003
136. At the scene, AS appeared frightened of Respondent and asked if he was still near the room. AS then gave officers permission to search the room. AS gave an item on the night stand to officers saying it was Respondent's drugs. The item AS gave officers field tested positive for methamphetamine and weighed 0.91 grams. Respondent admitted the methamphetamine was his. 27-000003-4
137. AS appeared to be very malnourished and unhealthy. She appeared extremely underweight. AS had visible bruises on her legs and arms and recent cuts on her legs and arms. She told the officer she had no choice but to be with Respondent. 27-000004
138. AS testified that she met Respondent the year after she graduated college. She lived

with Respondent's daughter and some other people in a home Respondent rented under an alias in Buffalo, MN. Respondent lived in this home also.

139. AS testified Respondent controlled who she could contact and told her that her family did not care about her. Respondent broke AS' phone and overdrew AS' bank account.
140. In reports, AS stated she was homeless and began living with Respondent in Buffalo. For two weeks he was pleasant. Then Respondent became verbally abusive, controlled AS' use of her phone, and sent AS sexual phone messages. 27-000004
141. AS testified that in the summer of 2015, Respondent took AS to a hotel in Elk River. Respondent tied each of her limbs to separate corners of the bed after tearing up the sheet in order to tie her. Respondent blindfolded AS. Respondent forced AS to take hits of methamphetamine. Respondent raped AS. AS did attempt to resist Respondent, but when she did, Respondent punched her.
142. AS testified that Respondent physically assaulted AS regularly. She required medical attention on more than one occasion. On November 11, 2015 (ex 21), while residing in the home of Jim Matthes in Andover, Respondent put his hands on AS throat and choked her. He threatened to kill her and used a large liquor bottle to assault her. He smashed her head against the ground. Police were called by AS' father, as he overheard the fight. AS went to Unity Hospital for treatment and then was in a women's shelter. Respondent was arrested, but later bailed out and came to the women's shelter. Mr. Matthes told shelter staff he was AS' grandfather and she was released to him. This testimony corroborates reports found on 27-000013
143. AS tried to leave multiple times, but Respondent would find her. 27-000013
144. Respondent threatened to hurt AS, her family, or the people she was with to garner compliance. 27-000013-14
145. AS testified that after the initial sexual assault in the summer of 2015 in Elk River, Respondent sexually assaulted her regularly, perhaps daily. She did not feel that she could say no, as she would be physically assaulted if she didn't comply. Sexual assault from Respondent included penile/vaginal and penile/oral penetration.
146. AS reported she had been forced against her will to be with Respondent every day since February 4, 2016. Respondent controlled all her money and did not let her have a job. Respondent assaulted AS every day. AS was not allowed to be by herself unless she

was showering or using the bathroom. Respondent forced AS to sleep in the same bed as him 27-000014

147. AS believed Respondent would kill her at some point. AS became aware of a murder of a woman, HL, in St. Paul. AS asked Respondent about the murder, and he told her “she entered my business and never came out.” Respondent threatened AS stating he would do to AS what he did to the female in St. Paul. 27-000014, 21
148. Respondent told AS how one can get rid of blood and what can cut through bone. 27-000014. AS testified that Respondent told her a Sawzall can cut through bone.
149. AS reported Respondent planned to flee to Colorado and told AS she had to come with him. AS believed Respondent would kill her there. 27-000015. AS testified that Respondent told her she was causing him too much trouble, so he was going to take her to Colorado and kill her there.
150. AS reported on August 10, 2016 an Anoka County deputy stopped a vehicle they were in. Respondent fled the scene and the deputies could not find him. 27-000021
151. On August 11, 2016 Respondent told AS they needed to leave town and stayed that night in a hotel in Plymouth. They drove to the Key Inn Motel at 1:00 on 8/12/16. At the hotel Respondent punched AS in her side, causing a bruise. There was an active DANCO in effect at the time. 27-000014
152. On or about August 13, 2016, Respondent was arrested. While being held in the Washington County jail Respondent wrote numerous letters, some were intended to communicate with AS. Others were intended to go to other recipients, but had messages to relay to AS. 27-000055-112
153. Respondent was charged and convicted of felony kidnapping.
154. Respondent was Sentenced to 54 months in prison and is subject to a lifetime sex offender registration requirement per the plea agreement. 1-00020
155. On January 14, 2016 (Ex. 23) at the Sonesta Inn in Eagan, Respondent again physically assaulted AS. She was afraid for her life, so she went to the hotel room next door. The people in the room did not assist her. AS got in touch with LL as she believed Respondent was going to kill her. AS sent LL pictures of the bruises she sustained from Respondent (Ex. 8)
156. AS testified that at the Sonesta hotel, Respondent threatened AS to do to her what he



did to HL. Respondent told AS in prior conversations that HL walked into her business and never came out. Respondent also told AS that a Sawzall will cut through bone. On this evening Respondent punched AS in the head. He also tackled her on the stairs in the hotel. Police were called and Respondent was eventually arrested.

157. After Respondent was arrested, AS went to the home of LL. Respondent sent two young men to get AS out of LL's home. AS has no idea how Respondent knew she was with LL. She has no idea how he knew where LL lived. The young men stated "Big Wally" wanted to see AS. LL told the young men to leave and told them they would get their gun.
158. AS testified that LL's husband, EL, is an over the road trucker and offered to take AS on his next trip in an effort to get out of town and away from Respondent. EL drove with AS to California. On the way back to Minnesota AS' cell phone was locked down and she could only receive texts from Respondent. Respondent told AS he would kill EL if she did not get out of the truck. AS and EL were in a parking lot in Omaha, Nebraska when AS told EL that her father was picking her up due to the threats from Respondent. AS got into a taxi which drove her to Respondent's vehicle in the same parking lot.
159. AS testified that Respondent placed ads on Craigslist that stated things like "20 year old looking for a gang bang". The ads encouraged people to bring their friends. "The more the merrier." The ads encouraged men to send pictures. There was one response to the ad found after a search warrant was executed. Respondent would rent hotel rooms to accomplish group sex involving AS. He rented the rooms using aliases. Respondent was present when other men had sex with AS after arranging such. Respondent would frequently videotape while others had sex with AS. He would also frequently join in and have sex with AS.
160. AS testified that there were periods of time where she would be up for days because of the methamphetamine she was forced to use. Respondent would harm her if she slept. After being up for days AS would sleep for long periods of time, and Respondent would sexually assault her while she was asleep.
161. AS testified after Respondent was arrested on August 13, 2016, she was interviewed by Officer Wiggins at the Woodbury police department and then taken to the hospital. AS

then went to her friend's home and tried to convince her friend into going on a trip. The friend did not want to go. AS drove out of Minnesota, but she was stopped in Iowa for speeding. When stopped, it was determined the vehicle she was driving had license plates belonging to Jim Matthes, but the VIN did not match and it was a stolen vehicle. AS was initially let go, but then officers contacted her and asked her to stop pending arrival of police. AS was arrested and incarcerated for 34 days in Council Bluffs, IA. She was eventually sentenced for Operating without owner's consent.

162. Detective Paul Kroshus of the Woodbury PD testified. Detective Kroshus investigated the sex trafficking.
163. Det. Kroshus testified that search warrants were executed of the home of James Matthes, and electronics and google searches were retrieved. Three e-mail addresses were used to post ads on Craigslist for AS to have "gang bangs."
164. Det. Kroshus testified that at the time the ads were placed, Craigslist was used more for "fetish" listings. Facebook back pages were used for "regular" prostitution.
165. Det. Kroshus was asked about a comment Respondent made while in jail telling another person to get AS back to the stable. Det. Kroshus testified that the term "stable" is a word pimps often use to refer to prostitutes.
166. Det. Kroshus confirmed the ads in Ex. 34-000014-20 came from e-mails belonging to Respondent.
167. Det. Kroshus confirmed the images in Exhibit 32 came from Respondent's cell phone. There are numerous images of AS. Many of the pictures were taken when AS was either unconscious, sleeping, or with her back turned to the camera so that she was unaware of the picture being taken. Some of the pictures are taken of AS in lingerie and on a bed. Some of the pictures are of AS' unclothed buttocks. Some of the pictures of AS are graphic, depicting sexual acts.
168. When authorities in Iowa were going to release AS, Detective Kroshus and another officer came to Iowa and took her statement. They drove AS back to Minnesota to a safe location where she lived for a while. Detective Kroshus took AS' statement one more time with a female officer.
169. Det. Kroshus followed up with two men that were identified as having sex with AS after Respondent began placing ads on Craigslist. One individual, Craig Ellingboe, did not

admit to having sex with AS.

170. The other individual identified, Chris Kromer, did admit meeting with AS and Respondent. Respondent bet Mr. Kromer that AS could make him ejaculate in 10 minutes from oral sex. Mr. Kromer admitted receiving oral sex from AS but did not admit he paid money for sex. Mr. Kromer told Det. Kroshus that Respondent joined in the sex act with AS.
171. In addition to the sexual offenses, Respondent has a lengthy criminal history.
172. **8/22/1995 K6-96-1290** Inver Grove Heights PD received report of stolen vehicle from Southview Chevrolet dealership. At 1:00 p.m. a lone male suspect came in and took a 1991 Suburban. He told people at the dealership he wanted to take the vehicle to his mechanic. He didn't have a driver's license but did present a credit card and birth certificate with the name Mark Steven Wallace. He left the dealership but never returned the Suburban. Respondent was sentenced to 21 days stay of execution. Serve 90 days. Exhibit 7
173. **10/19/1998 K8-99-656 South St Paul PD**, Respondent went to hardware store wearing a company shirt identifying him as an employee of a company with an account at the hardware store. He asked to charge a snowblower to the company account. After he received the first snow blower, he said he contacted his superiors at the company, and they gave him permission to purchase 3 more snow blowers. The account was charged, and Respondent left with 4 snow blowers, valued \$2,000 total. Respondent used the identity of his deceased brother, who died at the age of 7, David Martin Wallace. Respondent has a driver's license in his brother's name and became an employee at the company whose account he used to steal the snow blowers using his brother's name. One snowblower was recovered at Ultra Pawn on South Robert Street in West St Paul. Respondent received a sentence for a stay of execution of 17 months, serve 90 days (concurrent to K6-96-1290) pay restitution and fine. Exhibit 9
174. **1/10/2000 27-CR-00-33771 Bloomington PD**. A marijuana grow operation was found in the garage of Respondent and MJ, who were tenants in the same property. Respondent was in jail at the time the grow operation was found. Respondent gave a statement, indicated he could give information about an out of state chop shop and then didn't want to cooperate anymore with a statement. The report indicates Respondent

worked at Morrisey Company at 9304 Brant Ave S under the alias of Thomas Joseph Henning. He was also renting under the name Thomas Henning. Respondent has a step-brother or half-brother by the name of Thomas Henning who is a vulnerable adult. Respondent was sentenced to a stayed sentence of 21 months, follow drug court rules including paying child support. Exhibit 10

175. **4/3/07 – 9/25/08 62-CR-08-12418 Theft by Swindle** VW purchased 1969 Chevrolet pick-up from MJ for \$6,000 and traded a 1978 Chevrolet pick-up for purchase of 1969 Chevrolet. Respondent agreed to restore the 1969 Chevrolet and VW gave Respondent the vehicle. In February of 2008, VW demanded the return of the vehicle, but it wasn't returned. Respondent told VW the vehicle was in Wisconsin and he would meet him on 6/1/08 to return the vehicle. VW went to Wisconsin, but Respondent did not show up. MJ told police she saw Respondent remove the engine from a yellow pick-up truck and the exhaust and dispose of it in a dumpster near Fort Snelling. Ellingboe told police he assisted Respondent in removing the engine out of a yellow 1969 Chevrolet pick-up in March or April of 2008. In the Pre-Sentence Investigation (PSI), Respondent denies trying to steal from VW, stating he was trying to save his family home. Respondent said he didn't intend to commit a crime and would gladly pay VW. Respondent was sentenced to 17 months incarceration. Exhibit 11
176. **9/27/08 62-CR-09-335 identity theft and theft by swindle Maplewood PD** SS and TH (V1 and V2) answered a craigslist for rental property at 1736 Furness. On 9/27/08 V1 and V2 met up with Respondent who claimed to be Thomas Henning. Respondent agreed to rent the place for \$1,000/month and \$1,000 security deposit. They all signed a lease. V1 and V2 gave a \$1,000 check to Respondent for security deposit and another \$500 check for half of the first month's rent. They agreed he wouldn't cash the checks until Monday, 9/29/08. Respondent attempted to cash the check on 9/27/08 but was unable to because there were not enough funds in the account. Respondent called V1 and V2 and demanded \$1,000 cash. They complied. Respondent contacted them later and requested to return the other \$500 check in exchange for cash. On 9/30/08 V1 gave Respondent \$500 cash and Respondent returned the 2 checks. On 10/1/08 Respondent called V2 and asked for another \$500 cash. V1 and V2 became suspicious and went to police. They then found out the home was in foreclosure, and occupants have been

given 6 months-notice to vacate. V2 called Respondent with police present, arranged a time to meet to get cash. V2 went to the meeting place, and police followed. A “friend” of Tom’s called and said “Tom couldn’t make it”. Police went to the residence and talked to Tom. He didn’t know anything about the home being in foreclosure. Police showed him the lease and said it wasn’t his signature. He didn’t know anything about renting to V1 and V2. Respondent was charged and convicted of felony identity theft and theft by swindle. Respondent was sentenced to 15 months incarceration, respondent demanded execution. The 15 month sentence was concurrent to 62-CR-08-12418. Exhibit 13

177. **3/6/09 – 3/18/09 62-CR-09-10492 Maplewood PD** Respondent was paid \$3,000 by Bank of America to clean out the foreclosed property at 1735 Furness. Respondent also used dumpsters from Vasko. There were three dumpsters for a total cost of \$1,093.35. Respondent told Vasko to send the bill to 1314 Reaney in St. Paul, indicating his secretary would pay for it. The address is of an old babysitter who was allowing Respondent to store items in her garage. The dumpster bill was not paid, and Respondent did not finish the job of cleaning the foreclosed property. Respondent was charged and convicted of felony theft by swindle. He was sentenced to 365 days. Exhibit 14
178. **4/9/09 Chippewa County, WI MJ**, who has had a significant relationship and children with Respondent, worked at a gas station late at night. Earlier on 4/9/09 Respondent called MJ and told her there was going to be a robbery and told her to say a red ruck drove down 53. When the robbery occurred, she called the manager of the store, and then police. They discover after a search warrant at MJ’s house that Respondent had planned this out and had a friend rob the gas station. MJ told police the robber showed her a gun. Investigation revealed there was no gun used in this offense. The robber knew about a safe in the store. MJ told police she had told Respondent about the safe in prior conversations because he was asking about her job. MJ’s children found rolls of quarters and went to a local restaurant and paid for meals in all quarters. Respondent was staying at MJ’s apartment because he had criminal warrants out of Ramsey County, MN. Chippewa deputies had completed a knock and talk at MJ’s house before the warrant and asked to look for people—she wouldn’t allow it. Respondent was there at

her apartment. MJ told police that Respondent manipulated their daughter into moving money from bushes into MJ's trunk. MJ had a trip to the cities planned for Easter. MJ drove her car with the money in the trunk. When in the cities, Respondent had MJ drive a different car to go pick up a ham, and while she was gone, Respondent and JF counted money and their daughter watched them. Respondent was charged and convicted of misdemeanor theft and sentenced to 204 days. Exhibit 15

179. **9/26/12 86-CR-13-332 5<sup>th</sup> degree controlled substance Wright County.** Wright County Sheriff's Office executed a search warrant on the home of Respondent and marijuana. In the pole shed there were 34 marijuana plants, 41 marijuana "clones" (no roots), drug paraphernalia, potting soil, fertilizer, empty pots and grow lights. A small amount of marijuana was also found within home along with paraphernalia. On October 10, 2013 Respondent was sentenced to 90 days, was given a stay of execution with conditions he get a chemical dependency (CD) evaluation, and other standard conditions. Exhibit 18
180. **5/8/13 Theft 86-CR-13-3579 Wright County.** Respondent took a 2003 Chrysler Concorde for a test drive. The dealership received a phone call that the vehicle was in a lot on Lake Street. Wright County Detective Adams called Respondent and Respondent said he did not steal the vehicle, it broke down in Minneapolis. Respondent said he left the vehicle parked behind a bar. Detective Adams found the vehicle and it was in "proper mechanical order." Respondent was convicted of theft and sentenced on 10/10/13 to 365 days stayed, serve 90 days in jail and 1 year probation. Exhibit 19
181. **8/7/14 5<sup>th</sup> degree controlled substance, burg 2<sup>nd</sup> possess tools Hennepin County.** Respondent was staying at Extended Stay Hotel in Maple Grove under the name "Michael Knight." Respondent sawed a hole in the wall of hotel room from Respondent's room 305 to adjoining room 303. CT, the occupant of room 303 entered his room and saw a man there and a hole in the wall. CT told the man to leave or he would call police. The man left, then CT noticed his phone was missing. CT went into the hallway and confronted Respondent. Respondent returned CT's phone. Police responded and when Respondent saw officers he threw small amount of methamphetamine and a pipe to the ground. The methamphetamine was weighed and was 0.351 grams. Respondent was interviewed and maintained Michael Knight is a real

person who rented the room for the two of them and Respondent paid cash for the room. Respondent told the officers he knew an officer had been by earlier that day and he had a warrant, so he used the other "exit". Respondent admitted he cut a hole in the wall because it was his daughter's birthday and he didn't want to get "hemmed up." Respondent claimed he didn't take CT's phone on purpose, it was an accident and thought it was his own phone. Respondent claims the needles found in the room belonged to MJ because Respondent "hates needles." During his statement officer indicated there was synthetic heroin. According to Wright County probation violation report dated 6/29/15 charges were not formally filed, as the Drug Task Force was going to have respondent do drug buys for them. Respondent had previously been informed he cannot be involved in drug buys as that puts him in possession, a violation of probation. According to court records in Wright County, "per Law Enforcement, there was another recent incident wherein [Respondent] stole some classic guitars from another and pawned them. This as well was part of the DTF deal." Exhibit 20

182. **11/11/15 Domestic assault/warrant arrest City of Andover Anoka County Sheriff's Office.**

183. Victim, AS, (same AS that was involved in the kidnapping conviction), was at Alexandria House. AS was taken to Unity, she had visible bruises on her arms. AS had multiple bruises in "multiple stages of healing." AS had a bruise on her left elbow that appeared to be recent. AS reported Respondent threw her to the ground and sat on her causing pain. Respondent placed his hand on her throat and began choking her. Respondent said "I'm going to kill you." Respondent grabbed her hair and slammed her head against the ground repeatedly to the point where she lost consciousness. AS did not want to report the incident and did not want to elaborate about what happened. AS told Anoka County Detective Patterson she hadn't been able to leave the residence and that the roommate prevents her from using a phone to call family or the police. At the time Respondent was arrested at 4123 165 Ave NW Andover, there were "numerous large sized bowie style knives throughout the residence." (p.99) Exhibit 21

184. **DANCO violation November 14, 2015** Scott Knealing of Anoka County records wrote a report indicating he checked jail phone records as part of discovery. On 11/14/15 Respondent called JM to get the phone number for AS and told JM to call her number

after he found it. At 11:26 Respondent called JM again and told JM “we need to get ahold of this girl. We need to get ahold of her, you need to go to the Sheriff’s Office, you need to go wherever you need to go. You need to get her back into the stable so were fine, because right now we are not.” At 11:32 called an unidentified female asking her to help find the battered women’s shelter. Respondent is heard saying “you need to find this mother fucker. I don’t want no problems with this person, I need this person on my side.”

185. On 11/17/15 at 1907 Respondent called AS. Respondent told AS that he is going to be transferred to Wright County and to use his daughter’s ID to visit him. AS told Respondent there might be a no contact and it is good for one year. Respondent told her to go to the courthouse to drop the no contact. Exhibit 22
186. **1/15/16 assault, violate DANCO, damage to prop 4<sup>th</sup>, drug paraphernalia.** Eagan City Attorney. AS contacted friends LL and EL who live in Delano. AS was staying at building 12, room 22 at Sonesta Suites 3040 Eagandale Place. AS told LL and EL how she was being physically and mentally abused. AS told them she had to go back to the room because Respondent has threatened further violence on AS and her family. Officers spoke to management at the building. There had been an altercation earlier that evening and a female had been pounding on other doors in the complex asking for help. An employee went to the room and heard yelling and crying, but no one would come to the door. There is a policy that the complex does not call police unless 2 employees hear the disturbance. Respondent rented the room under the name JM. Officers knocked on the door, AS said she had to get dressed. Officers heard a lot of noise and waited a long time. Respondent crawled up into the rafters of the attic and defecated while there. Respondent eventually came down and was arrested on a body only warrant for Anoka misdemeanor domestic assault. Respondent damaged the ceiling when he was hiding from police. AS left with LL and EL. AS told officers she was afraid of “what he’ll do to me.” AS said Respondent assaulted her that day and on a previous occasion. That day he punched her in the forehead, choked her while pushing her down onto the stairs. AS gave a statement that he gave her a bloody nose in the morning when he punched her in the face. Respondent told her she was being too loud and punched her in the forehead and pushed her down onto the stairs and choked her. AS showed bruises she



said Respondent gave her a week ago. AS said Respondent took her phone today. AS said she was able to get out when Respondent left and she pounded on the other upstairs unit door. AS said two males came to the door, but they wouldn't let her in. They later called management. Exhibit 23

187. **1/27-28/16 violate DANCO** Anoka Sheriff Office. AS came to the Anoka County Sheriff's Office on Hanson Blvd. AS told Deputy Sabo that Respondent was released from jail recently and he emailed her twice in violation of no contact order. In one e-mail dated 1/27/16 at 2045 to AS' e-mail address contained the subject: Russian Doll. The body of e-mail was: "Talk to me baby." AS said Respondent is the only one who called her Russian Doll. The second e-mail was to an account that Respondent set up for AS. In the body of the e-mail Respondent said he would get her a new iPad and iPhone. AS said Respondent is the only one who knows that her iPad is broken and that her iPhone is bent because he's the one who bent her iPhone and shattered the iPad two weeks ago in Dakota County. AS told the deputy she was a friend of Respondent's daughter and at one point lived with both Respondent and his daughter in a house in Andover at 4123 165<sup>th</sup> Ave NW. Respondent rents from JM. AS said Respondent developed some type of fixation with her and was arrested earlier in November by Anoka County Sheriff's Office regarding domestic abuse. In the e-mail he apologizes for hurting her and promises on his mom that he will never hurt her again. Exhibit 24
188. **8/9/16 DANCO violation** Anoka Sheriff Office Deputy Barrett saw Respondent driving and pull into driveway where Respondent lived. Respondent had multiple warrants. Deputy Barrett turned his vehicle and stopped Respondent's car. Driver was AS and the deputy only saw AS in the vehicle. Deputy Barrett said he saw 2 people earlier and AS said it was a friend. Eventually AS admitted Respondent was driving and after seeing Deputy Barrett he got out and ran from the car into the woods. Citation for violation of DANCO issued. Exhibit 26
189. **3/25/17 82-CR-17-1276 Washington County Sheriff's Office 3<sup>rd</sup> degree assault.** In the Washington County jail, Respondent threw a glass of scalding hot water in the face of FL Jr., and then punched him repeatedly on his head and upper body. FL Jr did not return any punches and covered himself in an attempt to deflect the blows. FL Jr received medical attention from jail nursing staff, he had left sided facial, neck and ear

pain secondary to 2<sup>nd</sup> degree burns. He had “sloughing skin on the left cheek and left side of his forehead” from his left temple to the top of his left ear. The water used is normally used for inmates preparing noodles or rice and is heated to approximately 180 degrees. Exhibit 28

190. **Wright County probation violation reports** indicate Respondent completely failed to follow through with all aspects of probationary conditions. Multiple violation reports were filed. It was reported that Respondent failed probation in the following ways:
191. Respondent failed to report to jail, despite the jail start date being moved upon request of Respondent and his attorney on more than one occasion. Respondent was initially to report to jail in February of 2014. The date was pushed out to June of 2014. Respondent’s attorney had also asked that Respondent be allowed to serve the jail time on weekends. In June of 2014, Respondent came to the jail lobby to presumably commence his sentence. However, before he was booked, he reported that his daughter was going to the hospital by ambulance so he could not stay. Respondent was instructed to contact Sgt. Rivers to discuss his jail time, but he never did.
192. Respondent did not complete chemical dependency (CD) assessment.
193. Respondent tested positive for methamphetamine on more than one occasion.
194. Respondent failed to attend numerous meetings with probation agent. It was reported that Respondent had not been in contact with probation after he completed jail. It was further reported that Respondent would make appointments, break them and reschedule. The probation agent reported that they worked around Respondent’s schedule, but he still never made appointments. At one point Respondent left a “condescending” voice message for the agent indicating Respondent was calling agent’s supervisor because Respondent couldn’t work with the agent.
195. On 7/24/15 Respondent met with probation agent. The agent asked Respondent to submit to UA. Respondent told the agent he did one at the jail. The agent said that would have been unusual. Respondent then said he did one for his doctor because he had blood in his urine. The agent then did a saliva test, which was positive. The agent then told Respondent to wait in the lobby. Respondent did not wait. The agent reported that the wait was less than 10 minutes. The agent called the jail about the UA and was told the jail did not take a UA.

196. The probation agent reported to the court that Respondent is unamenable to probation, takes no accountability and the agent requested execution of sentence.
197. It was reported that on 7/21/15 Respondent was ordered to report to probation immediately upon release, he reported on 7/24/15. Respondent was scheduled for an office visit on 8/6/15. Respondent did not make visit but called saying he didn't remember what time he was to report. He was rescheduled for 5:00 on 8/20/15. Respondent failed to report. Respondent did not call and failed to contact agent. On 9/23/15 Respondent failed to appear for continued probation violation hearing, and a body only warrant issued.
198. On 5/11/15 Respondent phoned his agent telling her he was on his way to Williston, ND to retrieve his daughter. Respondent had not been given permission to leave the State.
199. A 4/2/17 probation violation report indicates Respondent has a new third degree assault charge, and more DANCO violations.
200. The court discharged Respondent from probation on 4/13/18 after receiving a report indicating Respondent was in prison until 8/12/19. Exhibit 18
201. **Dr. Michael Thompson provided a pre-petition evaluation** to Anoka County on July 1, 2019. The evaluation was based solely on documentation. Dr. Thomas did not interview Respondent. Dr. Thompson opined Respondent meets the statutory definition of a sexually dangerous person and sexual psychopathic personality.
202. Dr. Thompson considered the 2016 Kidnapping offense as sexually motivated. Dr. Thompson did not have the benefit of all the records related to the kidnapping. As such, there was no direct information that Respondent sexually assaulted AS. Even without this direct information, Dr. Thompson opined the kidnapping possessed elements of violence and sexual coercion. He further opined there was evidence to presume that Respondent and AS were involved intimately, "though no sexual violence was reported." Ex.2-000017.
203. Dr. Thompson pointed out that AS "feared for her life because Mr. Wallace was suspected in an unsolved Ramsey County homicide. The dynamics of brutality, power and control present in the Kidnapping charge mirror those of his 1987 criminal sexual conduct convictions and prove that the personality elements contributory to his 1987 offenses remain. As such, his risk is significantly elevated." Ex. 2-000017

204. Dr. Thompson scored a Static-99R, giving the score of 6. Ex. 2-000018.
205. **Dr. James Gilbertson, the first court-appointed examiner opined Respondent meets criteria as a sexually dangerous person and as a sexual psychopathic personality.**
206. The parties stipulated that Dr. Gilbertson possesses the requisite education, experience, and training to qualify as an expert.
207. Dr. Gilbertson analyzed the elements utilizing the *Linehan* factors set out in 518 N.W.2d 609 (Minn. 1994); as well as case law established in *In re Blodgett* 510 N.W.2d 910 (Minn. App. 1994), *In re Bieganowski*, 520 N.W.2d 525 (Minn. App. 1994); *In re Pirkl*, 531 N.W.2d 902 (Minn. App. 1994); and *In re Irwin* 529 N.W.2d 366 (Minn. App. 1995).
208. Dr. Gilbertson provided a table of the risk instruments utilized not only by himself, but the risk assessment of Dr. Backes with the Department of Corrections. All the risk instruments indicated a high risk level associated with Respondent. Dr. Gilbertson testified this is significant because no matter what instrument is utilized, and no matter what evaluator is utilizing the instrument, the risk level remains consistently high.
209. Dr. Gilbertson was cross-examined regarding inter-rater reliability. Dr. Gilbertson explained this is when examiners utilize the same risk instrument and the scores are comparable. The more there is agreement with the scoring, the more likely the score is valid. Dr. Gilbertson scored Respondent on the static-99R with a score of 6 in his report. Dr. Thompson's score of Respondent on the Static-99R was also a 6. There is inter-rater reliability between these two forensic psychologists.
210. During testimony, Dr. Gilbertson revised his score on the Static-99R to a 7. Dr. Gilbertson testified the percentile rank of a person with a score of 7 on the Static-99R is 97.2%. This means Respondent's score is 97.2% higher than the sample of sexual offenders rated on this instrument.
211. The LSI-R risk instrument, which is the Level of Services Inventory, Revised was utilized by Dr. Backes with the DOC. Respondent scored 20 out of 43, which would have Respondent "placed on elevated supervision according to standards set." Ex.1-000039.
212. The MnSOST-3.1 (Minnesota Sex Offender Screening Tool) was also utilized by Dr.

- Backes with the DOC. Respondent's score was 19.43. Respondent's score was "higher than 94.30% of his peers and places him in a group of individuals who are considered at a higher risk to be reconvicted of a sex offense within four years. . ." Ex.1-000006
213. Dr. Gilbertson scored Respondent with the VRAG, Violence Risk Appraisal Guide-Revised, which indicated Respondent's risk is high.
214. Dr. Gilbertson administered the PCL-R-2, the Psychopathic Checklist-Revised, second edition. The Respondent yielded a score of 26. The score of 26 indicates Respondent carries a high level of psychopathy. While the PCL-R is not a risk assessment, there is a correlation between high psychopathy and increased risk of recidivism. Ex.36-000026.
215. Dr. Gilbertson described Respondent's behavior as being "absent empathy or concern." Ex.36-000027. He further wrote of Respondent that he views things only from the perspective of pleasure and success, and Respondent flaunts rules and authority. Ex. 36-00027.
216. Dr. Gilbertson reported that Respondent is an untreated sex offender. Respondent does not view "himself as being a person of any sexual risk" as such, Dr. Gilbertson did not believe Respondent would be able to enroll in and sustain treatment on a DOC release plan. Ex.36-00027.
217. Dr. Gilbertson provided a diagnosis of Respondent as Antisocial Personality Disorder, with a psychopathic modifier.
218. Dr. Gilbertson opined there is no other residentially based sex offender treatment program that would be able to meet Respondent's treatment needs. Ex. 36-000031
219. Dr. Gilbertson's testimony and report were credible.
220. **Dr. Anne Pascucci, the court's second appointed examiner filed a report and testified.**
221. The parties stipulated that Dr. Pascucci possesses the requisite education, experience, and training to qualify as an expert and the Court so finds.
222. Dr. Pascucci opined Respondent technically meets criteria as a sexually dangerous person and sexual psychopathic personality, however, she concluded civil commitment to the Minnesota Sex Offender Program is "premature." Ex. 38-000037
223. Dr. Pascucci diagnosed Respondent with antisocial personality disorder; encounter for

mental health services for perpetrator of nonparental child sexual abuse; encounter for mental health services for perpetrator of nonspousal or nonpartner adult abuse (sexual); spouse or partner violence, sexual, suspected; spouse or partner violence, physical, confirmed; cannabis use disorder, moderate, in a controlled environment; and unspecified methamphetamine use disorder. She testified that encounter for mental health services for perpetrator of nonparental child sexual abuse; encounter for mental health services for perpetrator of nonspousal or nonpartner adult abuse (sexual); spouse or partner violence, sexual, suspected; and spouse or partner violence, physical, confirmed are not mental disorders.

224. Dr. Pascucci's opinion is less credible. She opined the kidnapping offense was not sexually motivated. 38-000020. Dr. Pascucci was present in the courtroom when AS testified. Despite her knowledge of the regular and numerous sexual assaults Respondent perpetrated against AS, Dr. Pascucci remained firm in her opinion that the assaults were not sexually motivated.
225. Dr. Pascucci failed to follow the Static-99R coding rules which specifically discuss this type of offending behavior and provide when an offender keeps a victim to "facilitate the sexual assault, the Forcible Confinement [kidnapping] would be counted as a sex offence [sic] charge and conviction." Ex. 40-000020-21
226. In the past, Dr. Pascucci has misapplied the law. In past litigation, Dr. Pascucci admitted to misapplying the legal standard called for in *Call v. Gomez*, 535 N.W.2d 312 (Minn. 1995) when she was a risk assessor for the Minnesota Sex Offender Program.
227. Dr. Pascucci did not appropriately apply the legal standard when indicating there is a lesser restrictive alternative to commitment to the Minnesota sex offender program. Dr. Pascucci did not address whether the less restrictive treatment is available. She also did not address whether a treatment program is willing to accept Respondent under commitment. Dr. Pascucci also did not address whether less restrictive treatment is consistent with the requirements of public safety. In fact, Dr. Pascucci states "[t]here is little doubt Mr. Wallace will continue to engage in acts of interpersonal and instrumental violence in the future." Ex. 38-000036. Despite the fact that not all of the statutorily required elements are satisfied for a lesser restrictive alternative, and despite the fact that Respondent is extremely dangerous, Dr. Pascucci remained firm in her opinion that

he should not be committed to the Minnesota sex offender program.

Sexually Dangerous Person Statute

228. The Court finds that Respondent has engaged in a course of harmful sexual conduct as defined by Minn. Stat. § 253D.02, subd. 8(a). There is a rebuttable presumption that criminal sexual conduct convictions in the first through fourth degree result in a substantial likelihood that a victim will suffer serious physical or emotional harm. Minn. Stat. § 253D.02, subd. 8(b). Respondent's first and third degree criminal sexual conduct convictions trigger the presumption. The experts agree that he has engaged in a course of harmful sexual conduct. Respondent did not challenge that he has engaged in a course of harmful sexual conduct.
229. His course of harmful sexual conduct began in 1987 resulting in convictions. In 1987 Respondent brutally sexually assaulted his two victims, tied them up and anally raped them. Respondent often uses drugs to incapacitate his victims. Respondent's harmful sexual conduct has remained the same as evidence by his actions against AS. Respondent's assaults against AS continued for one year and included tying her up, blindfolding her, forcing her to use methamphetamine, physically assaulting her and listing her on Craigslist for "gangbangs."
230. Respondent has manifested a sexual, personality, or other mental disorder of dysfunction. Both Dr. Gilbertson and Dr. Pascucci opined Respondent carries a diagnosis of antisocial personality disorder.
231. As a result of the course of harmful sexual conduct and his antisocial personality disorder, Respondent is highly likely to engage in acts of harmful sexual conduct in the future. Past behavior is the best predictor of future behavior. Respondent has demonstrated over and over again that he brutally sexually assaults victims, uses intimidation and physical abuse to accomplish his sexual assaults. In addition to his past behavior, Respondent scored in the high range on many risk instruments. Respondent scored 7 on the Static-99R. Dr. Gilbertson testified the percentile rank of a person with a score of 7 on the Static-99R is 97.2%.
232. The Static-99R is a 10-item actuarial tool designed to predict sexual recidivism in adult males. Dr. Gilbertson credibly testified that it is considered the most frequently used risk assessment for sex offenders and the most widely researched tool. He explained

that it is widely accepted in its use to assess sex offenders for the purpose of indeterminate civil commitment.

233. The Static-99R is objectively scored and provides a multidimensional estimate of risk based on empirically derived factors shown to predict recidivism. The Static-99R ranks offenders (based on their score) according to their relative risk for sexual recidivism in categories (i.e., very low risk to well above average risk). Relative risk provides information as to how certain offenders' risk compares with other offenders. The Static-99R also provides absolute recidivism rates for five and ten year periods. In order to obtain the risk percentage, the raw score is compared to the risk table for one of the normative samples - routine or high risk/high needs. The evaluator must determine which normative sample the subject should be compared to in order to get the most accurate estimate.
234. The Static-99R utilizes only static factors that have been empirically shown to be associated with sexual recidivism. The Static-99R considers the following factors:
1. Age;
  2. Ever lived with a lover for at least 2 years;
  3. Index non-sexual violence convictions;
  4. Prior non-sexual violence – any convictions;
  5. Prior sexual offenses;
  6. Prior sentencing dates;
  7. Any convictions for non-contact sex offenses;
  8. Unrelated victims;
  9. Stranger victims; and
  10. Male victims.
235. With the exception of two factors (age and prior sex offenses), the Static-99R is scored by giving an individual a 1 (present) or 0 (not present). The evaluator calculates the total score which translates into five relative risk categories: Level I/very low risk (-3 through -2), Level II/below average risk (-1 through 0), Level III/average risk (1 through 3), Level IVa/above average risk (4 through 5), and Level IVb/well above average risk (6+). The mean score is 2.
236. Respondent has been scored on the Static-99R by a number of different evaluators with varying scores. Two different DOC psychologists scored the Static-99R: Dr. Halie Rostberg on November 29, 2017, and Dr. Backes in a report dated May 28, 2019. Ex. 1-28; Ex. 16-117. Drs. Rostberg and Backes both gave Respondent a score of 3. In his



report, Dr. Gilbertson provided two different scores (5 or 6) for Respondent. During his direct testimony, he stated that he believed 6 was the most valid score but subsequently changed his score to a 7. Dr. Pascucci gave Respondent a score of 3. Dr. Thompson gave Respondent a score of 6.

- a. Dr. Gilbertson credibly explained that inter-rater reliability is the probability that two evaluators using the same tool on the same subject would produce the same score. For the Static-99R, various studies have indicated that the inter-rater reliability is less than one point. Since the various scores do not fall within this margin, an analysis of the scoring is necessary to determine which examiner is most credible and persuasive.
- b. There are five items in which the evaluators scored Respondent differently – items 1, 3, 4, 5, and 6 – in order to reach different total scores. Drs. Pascucci, Rostberg, and Backes scored all five of these items the same. Drs. Gilbertson and Thompson scored four of these five items the same. Simply put, the total scores are different because the evaluators used different offenses as the index offense (the most recent sex offense). Drs. Gilbertson and Thompson considered the kidnapping to be the index offense, resulting in the higher scores. Drs. Pascucci, Rostberg, and Backes considered the 1987 sex offenses to be an index cluster and thus the index offense, resulting in the lower score.
- c. Dr. Gilbertson's opinion that the kidnapping was sexually motivated was equivocal and based on the statements made by AS and the police reports. Dr. Gilbertson was asked what he thought about the fact that the allegations made by AS regarding sex trafficking were specifically investigated and no arrest or charges resulted from it. He responded that the sex trafficking investigation was thorough and he was not sure what to make of it. He elaborated that it concerned him given her details about how often she claimed it to occur. He also agreed that sex trafficking can be about money rather than sexual gratification. Dr. Gilbertson testified that he included two different Static-99R scores in his report because there is some ambiguity as to whether the kidnapping is sexually motivated and can be counted as the index offense. The Court does find Dr. Gilbertson's opinion persuasive.

- d. Dr. Pascucci thoughtfully considered whether or not the kidnapping offense should be the index offense. She ultimately opined that sexual motivation for Respondent's behavior could not be substantiated. Most significant to Dr. Pascucci was the fact that law enforcement investigated the allegations and concluded that sex trafficking was not substantiated. Dr. Pascucci explained that if the sex trafficking investigation had not occurred, she would have considered the kidnapping to be sexually motivated. Given his diagnostic profile, Dr. Pascucci views Respondent as an antisocial, violent offender who used sexual violence as a tool, not his primary motivation. Dr. Pascucci concluded that Respondent's behavior towards AS was motivated by reputation, revenge, control, and his need to covet, not by sexual gratification. The Court does not find Dr. Pascucci's opinion persuasive
237. On the Static-99R, Dr. Pascucci gave Respondent a score of 3, which falls into the average relative risk category. Dr. Pascucci opined that Respondent should be compared to the high risk/high needs sample based on her assessment of his dynamic risk factors. A score of 3 in the high risk/high needs sample correlates to a risk of recidivism of 14% in 5 years and 22.9% in 10 years. Put another way, Dr. Pascucci opined that there is approximately an 86% likelihood Respondent will not reoffend in the next 5 years and 77% likelihood he will not reoffend in the next 10 years. The Court finds Dr. Pascucci's score, use, and explanation of the Static-99R to be less persuasive.
238. The Violence Risk Appraisal Guide – Revised ("VRAG-R") is an actuarial tool that measures violent recidivism. Violent recidivism, as defined by this tool, includes both nonsexual violent recidivism and sexual recidivism. Dr. Gilbertson credibly testified that it looks more at antisociality than deviant sexuality.
239. The VRAG-R includes 12 items:
1. Lived with both parents to age 16;
  2. Elementary school maladjustment;
  3. History of alcohol/drug problems;
  4. Married or common law relationship for at least 6 months;
  5. Criminal history of nonviolent offenses;
  6. Failure on conditional release;
  7. Age at index offense;
  8. Criminal history of violent offenses;

9. Prior admission to correctional institution;
10. Conduct disorder diagnosed prior to age 15;
11. Sex offending; and
12. Antisociality.

The scoring range on this tool is from -32 to 40. A total score is summed and compared to a normative grid to get the violent recidivism percentage for 5 and 12 year periods.

240. Dr. Gilbertson is the only expert who utilized the VRAG-R. He gave Respondent a score of 17, which correlates to a violent recidivism risk of 45% in 5 years and 69% in 12 years. Dr. Gilbertson cautioned that these rates are somewhat of an overestimate because the VRAG-R tabulates both nonsexual and sexual violence despite the fact that the Court is only interested in sexual violence. He explained that we do not know if domestic violence is sexually motivated or just plain frustration. Dr. Gilbertson testified that he does not rely on these numbers so much. Since this tool looks more at violent instead of sexual recidivism and overestimates Respondent's sexual risk, the Court does not give these risk estimates much weight.
241. The MN Sex Offender Screening Tool – 3.1.2 (“MnSOST-3.1.2”) is an actuarial tool which provides an offender's probability of sexual recidivism within 4 years of release. It was developed on a Minnesota population of adult male incarcerated offenders convicted of sex-related offenses. It consists of nine items that are combined to produce an overall score. The factors included within the MnSOST-3.1.2 are:
1. Predatory offense sentences;
  2. Felony offense sentences;
  3. Violations of orders for protection/stalking/harassment;
  4. Disorderly conduct convictions in last 3 years;
  5. Age and release date;
  6. Unsupervised release;
  7. Sex offender/chemical dependency treatment;
  8. Male victims; and
  9. Public place.
242. Neither Dr. Gilbertson nor Dr. Pascucci scored the MnSOST-3.1.2. Dr. Backes and Dr. Thompson both scored Respondent on the MnSOST-3.1.2 and reached the same score. Under the MnSOST-3.1.2, Respondent's predicted risk of sexual recidivism is 19.43% in 4 years.
243. The Level of Services Inventory, Revised (“LSI-R”) is a structured clinical judgment

tool used by parole and probation agents to review various static and dynamic risk factors. It provides a nominal risk category (low, medium, high) for general recidivism. Although Dr. Gilbertson mentioned the LSI-R in his report, he credibly testified that he does not use this tool and it is not frequently used in civil commitment cases.

244. Dr. Gilbertson reported that the score on the LSI-R is high for Respondent, but the records show otherwise. Over the years, Respondent's LSI-R scores have actually decreased. In April 2010, he received a score of 25. In November 2017, he received a score of 20. In March 2019, he received a score of 16, which correlates to the medium general recidivism category.
245. The Hare Psychopathy Checklist – Revised, 2nd Edition (“PCL-R”) is a rating scale for the assessment of psychopathic traits in an individual. Psychopathy is thought to exist on a continuum ranging from low to high. Psychopathy is a relevant consideration when assessing sexual recidivism, but the PCL-R does not objectively measure or quantify any level of risk. It is not an actuarial tool.
246. There are 20 items on the PCL-R and the evaluator scores each of the items as 0 (does not apply), 1 (applies to some degree), or 2 (clearly applies). The PCL-R factors are:
1. Glib and superficial charm;
  2. Grandiose estimation of self;
  3. Need for stimulation;
  4. Pathological lying;
  5. Cunning and manipulative;
  6. Lack of remorse or guilt;
  7. Shallow affect;
  8. Callousness and lack of empathy;
  9. Parasitic lifestyle;
  10. Poor behavioral controls;
  11. Sexual promiscuity;
  12. Early behavior problems;
  13. Lack of realistic long-term goals;
  14. Impulsivity;
  15. Irresponsibility;
  16. Failure to accept responsibility for own actions;
  17. Many short-term marital relationships;
  18. Juvenile delinquency;
  19. Revocation of conditional release; and
  20. Criminal versatility.

The score ranges from 0 to 40. A score of 25 or higher indicates a high degree of psychopathy and a score of 30 or higher means a person can be labeled a clinical psychopath. The Court credits this evidence.

247. Dr. Gilbertson gave Respondent a score of 26 on the PCL-R, while Dr. Pascucci gave him a score of 30.5. Both indicate a high degree of psychopathy. Dr. Pascucci reported that Respondent's score is "not commensurate with research concerning individuals who are considered sexual recidivists" because he does not evidence a deviant sexual preference. Ex. 38-26. Rather, Dr. Pascucci reported that his score is comparable to individuals who are considered violent offenders. Dr. Gilbertson echoed a similar sentiment in his report. Ex. 36-26 (high psychopathy index is known to be associated with high risk for general criminal recidivism).
248. Dr. Gilbertson testified a couple different times that it is important to consider dynamic (changeable) risk factors as part of a comprehensive risk assessment. He explained that there are tools available that can be used to assess dynamic risk such as the Stable-2007, but he did not use any tools. During his testimony, he likened the Stable-2007 to the Sexual Violence Risk-20, Version 2 ("SVR-20"). Dr. Gilbertson testified that since Dr. Backes scored the SVR-20, there was no need for him to score a dynamic risk tool.<sup>1</sup>
249. Dr. Backes found 8 of the 20 SVR-20 items to be relevant for Respondent, which Dr. Gilbertson described as falling in the high nominal risk category. Five of the eight items are actually static risk factors, not dynamic risk factors. Ex. 16-18 – 16-19 (victim of child abuse, nonsexual offending, sexual offending, physical harm in sexual offending, and psychological coercion in sexual offending). Nonsexual offending and sexual offending are both considered within the Static-99R. Dr. Gilbertson testified that offenses committed a long time ago followed by desistance tend to indicate the offense have little predictive value. Dr. Gilbertson also testified that massive injuries to a victim is not associated with increased risk, which is contrary to Dr. Backes' scoring. Ultimately, the SVR-20 only shows the presence of three dynamic risk factors for Respondent.
250. Drs. Gilbertson and Pascucci credibly explained that the Stable-2007 is a structured clinical judgment tool that includes empirically relevant dynamic risk factors. Dr. Pascucci did not

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<sup>1</sup> Dr. Gilbertson testified that he does not know Dr. Backes, what training he has had, or what documents he had available to him for his review.

score the Stable-2007 because it was normed on a community-based population and Respondent has been institutionalized for a prolonged period of time. For this reason, Dr. Pascucci analyzed the factors within the Stable-2007 to guide her assessment of his dynamic risk. Dr. Pascucci found that the dynamic risk factors of pro-social influences, intimacy deficits, and deviant sexual preference are partially present. She found that the dynamic risk factors of hostility toward women, lack of concern for others, poor problem-solving skills, negative emotionality, and cooperation with supervision are present. She found that general social rejection is not present.

251. Both Drs. Gilbertson and Pascucci credibly testified that it is important to consider the mitigating effect of protective factors as part of a comprehensive risk assessment. Dr. Gilbertson did not discuss protective factors in his report, but testified that intelligence and employment are mitigating factors. Drs. Pascucci and Backes utilized the Structured Assessment of Protective Factors (“SAPROF”) to guide their assessment of protective factors. The SAPROF includes factors that are empirically valid. Dr. Pascucci found three protective factors present: access to mental health professionals, supervised living conditions, and the presence of supervision. Dr. Backes found eight protective factors present: intelligence, secure attachment in childhood, self-control, work, attitudes toward authority, medication, professional care, and external control.
252. The Minnesota Supreme Court pronounced the *Linehan* factors as the legal test to determine likelihood of re-offense in 1994. *See In re Linehan (Linehan I)*, 518 N.W.2d 609, 614 (Minn. 1994).
253. Dr. Gilbertson credibly explained that the *Linehan* factors provide a clinical judgment view of risk and the risk instruments are better standardized and are supported by long-term studies. Drs. Gilbertson and Pascucci credibly testified that the *Linehan* factors overlap with the risk tools. Dr. Thompson stated that the law may be behind the science as many of the *Linehan* factors have been incorporated into actuarial tools and are weighted in a quantitative and statistical manner. The Court agrees.
254. The court must not rely on actuarial assessment or base rates. This is only one of the *Linehan* factors to consider. *Matter of Linehan (Linehan I)*, 518 N.W.2d 609 (Minn. 1994). The *Linehan* factors are still relevant and courts need to include them in their analysis. *In re Ince*, 847 N.W.2d 13 (Minn. 2014).

255. It is not necessary that all of the *Linehan* facts be present. Below is a review of the factors as applied to Respondent.

- a. Demographic Characteristics: Case law has described demographic characteristics to include gender, relatively young age, lower socio-economic status, and limited work history. *See In re Civil Commitment of Razmyslowski*, 2005 Minn. App. Unpub. LEXIS 412 (Minn. App. 2005). Respondent claims employment in the past, which Dr. Gilbertson pointed out is a protective factor. Respondent's age does not appear to be a factor in reducing his risk as he recently showed the propensity towards sexual assault. He does not carry any medical conditions that reduce his overall risk.
- b. History of Violent Behavior (paying particular attention to recency, severity, and frequency of violent acts): Respondent has convictions for domestic assault, violation of a DANCO, 3<sup>rd</sup> degree assault, kidnapping and criminal sexual conduct. His offending pattern includes actions that are extremely violent. His victims have sought medical care due to his violence. His victims have suffered cuts that needed stitches and they have believed that Respondent had broken their bones after he physical assaulted them.
- c. Base Rate Statistics: ““Base rates are the prevalence of any given factor, trait, or behavioral occurrence in any given population.” Ex. 36-25. Both experts used the actuarial tools to consider this *Linehan* factor. Respondent's base rate on actuarials, such as the Static-99R, VRAG, MnSOST and the LSI-R are high. In addition, he achieved a score on the PCL-R indicating a high level of psychopathy.
- d. Sources of Stress in Respondent's Life (Particularly, in the Resemblance to Previous Stressors in the Community): If Respondent was not committed, he would be placed on Intensive Supervised Release through probation. In the past Respondent has not been accountable to the requirements of probation and has had numerous violations. Respondent would likely face difficulty obtaining employment given his level III notification status. He would also likely face difficulty finding housing.
- e. Similarity of Present and Future Contexts to the Past: In many ways Respondent's present and future is unchanged. In review of his phone calls from prison, he

continues to rely on one friend in particular to assist him in contacting the mother of 2 of his children. Respondent contacts two of his children, the children he was living with when AS came to live with him, which ultimately led to domestic assault, violation of DANCO, kidnapping and stalking charges. There is no indication Respondent has changed from the past. His avenues in the future remain the same.

- f. Record of Sex Therapy Programs: The Court finds that Respondent has not yet participated in sex offender treatment. He is an untreated sex offender.
256. When reviewing the *Linehan* factors and the specific features each of the experts considered within the *Linehan* factors, it is clear to the Court that the factors indicate a high level of risk for the Respondent.
257. Petitioner has proven by clear and convincing evidence that Respondent has a sexual psychopathic personality.
258. Respondent engaged in a habitual course of sexual misconduct. His sexual misconduct was repetitive and was in the same behavioral form. His pattern of assaults is clearly resistive to change. He started sexually assaulting women. His pattern continued through his assault of AS until he was arrested in 2016.
259. Respondent's offenses are similar. Respondent's pattern is unmistakable. He victimized young women in the age of 17-18 years old. He either used the lure of a job interview as a guise to gain access to young women, or victims were brought into Respondent's household offering a place to live if the victim would clean up. Respondent binds his victims, and either blindfolds or gags them. Respondent uses drugs to incapacitate his victims and uses threats to gain compliance. Respondent's offending behavior does demonstrate a pattern. The standard set forth in *In re Bieganowski*, 520 N.W.2d 525 (Minn. App. 1994) is satisfied.
260. Respondent demonstrates a lack of customary standards of good judgment and a failure to appreciate the consequences of his personal acts. Respondent treats his victims with utter disregard for their respect, dignity or autonomy. Respondent does not take accountability for his actions and continues to break the law, failing to appreciate the consequences of his actions.
261. Respondent has shown he has an utter lack of power to control his sexual impulses. The



factors set forth by the Minnesota Supreme court in *In re Blodgett*, 510 N.W.2d 910 (Minn. 1994) regarding this element are the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and his victims, and the offender's attitude and mood. Respondent's sexual assaults were brutal in nature. He not only physically restrained his victims, he threatened and physically assaulted them to ensure compliance. His victims were hospitalized as a result of the violence he inflicted upon them. Respondent's attitude towards his victims was one of indifference or disdain. Respondent told AS that she was causing him too much trouble when he indicated they were going to leave the state and head to Colorado where he would kill her.

262. The court in *In re Bieganowski* indicated a person's failure to remove himself from situations that provide opportunity for similar offenses, or that trigger the impulsive behavior, demonstrate lack of control. Respondent's drug use is a classic example of failing to remove himself from situations, or triggers to offending.
263. A lack of insight into sexual offending behavior also indicates an inability to control sexual impulses. *In re Irwin*, 529 N.W.2d 366, 375 (Minn. Ct. App. 1995). Both examiners testified that Respondent does not acknowledge that he has a problem. Respondent appears to deflect blame or indicates that the victims are over stating what happened during the offense.

#### Sexual Psychopathic Personality Statute

264. It is largely understood that if an individual meets criteria for commitment as an SDP, he can meet criteria for commitment as an SPP. For the reasons discussed above, the evidence is sufficient to prove that Respondent meets criteria for commitment as an SDP. Therefore, the Court finds that he does meet the higher standard for commitment as an SPP.
265. Both Drs. Gilbertson and Pascucci opined that Respondent possesses at least one of these four conditions: emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, or failure to appreciate consequences of personal acts. They both agreed Mr. Respondent lacked customary standards of good judgment. Respondent did not challenge that he lacked customary standards of good

judgment. The Court finds that Respondent lacked customary standards of good judgment.

266. Both Drs. Gilbertson and Pascucci opined that Respondent has engaged in a habitual course of sexual misconduct. Respondent did not challenge this element. The Court finds that Respondent has engaged in in a habitual course of sexual misconduct.
267. Dr. Gilbertson opined that Respondent has an utter lack of power to control his sexual impulses. Dr. Pascucci found equivocal evidence that Respondent may have an utter lack of power to control his sexual impulses. The Court finds there is clear and convincing evidence that Respondent has an utter lack of power to control his sexual impulses.
268. The Court finds that the level of factor repetition present in the utter lack of control case law factors is extraordinary. Some of these case law factors repeat themselves. For example, the lack of sex offender treatment is considered twice in the *Pirkkl* factors, once in the *Irwin* factors, and once in the *Linehan* factors. For the same reasons the Court gives weight to the *Linehan* factors, the Court also gives weight to the SPP case law factors.
269. The SPP dangerousness element is very similar to the “highly likely” element of the SDP statute. However, unlike the SDP provision, the SPP provision is limited to only a sub-class of dangerous sexual offenses that involve violence or certain kinds of enduring harm. For the same reasons that Respondent is highly likely to reoffend, the Court finds that he is dangerous to other persons.

#### Less Restrictive Alternative

270. There is no less restrictive treatment program available to Respondent willing to accept him under commitment. The Minnesota Sex Offender Program is the only program that is consistent with Respondent’s treatment needs and the requirements of public safety. This court received testimony indicating the Alpha program has not accepted Respondent into their program. Respondent failed probation in the past by not completing any of the terms of probation, including serving his jail term. This court finds Respondent would not follow through with sex offender treatment in the community.

#### CONCLUSIONS OF LAW

### Sexually Dangerous Person Statute

1. In order to be committed as an SDP, Petitioner must prove, by clear and convincing evidence, that Respondent has: 1) engaged in a course of harmful sexual conduct; 2) has manifested a sexual, personality, or other mental disorder or dysfunction; and 3) as a result, is likely to engage in acts of harmful sexual conduct. Minn. Stat. § 253D.02, subd. 16; Minn. Stat. § 253D.07, subd. 3.
2. **“Harmful sexual conduct”** is defined in Minn.Stat. §253D.02, Subd 8 as “. . .sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” The legislature designated a rebuttable presumption that specific crimes are presumed to be harmful sexual conduct, “[i]f the conduct was motivated by the person’s sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal. . .” Minn.Stat. 253D.02, subd. 8(b). Kidnapping is included in this list of crimes.
3. Dr. James Gilbertson, the court’s first appointed examiner, appropriately opined the kidnapping offense from 2016 was sexually motivated. Dr. Gilbertson wrote that Respondent “has three convictions, all of which, either in total or in part, were sexually motivate. In the Kidnapping charge, the records suggest that he had multiple sexual contacts with the victim that he kept.” Ex. 36-000014.
4. Dr. Pascucci opined that Respondent’s kidnapping was not “sexually motivated.” Dr. Pascucci described in her report that Respondent “engaged in a relationship with [AS] that was marked by extensive physical and psychological abuse . . . while this behavior is serious and concerning, there is limited evidence to suggest this behavior was sexually motivated.” Ex. 38-000019. Dr. Pascucci’s opinion minimizes the Respondent’s behavior. The victim of Respondent’s kidnapping, AS, credibly and compellingly testified that Respondent started his sexual assaults in August of 2015. He accomplished his first sexual assault by tying her to the four corners of the hotel bed. He tied her by ripping sheets from the hotel bed. Respondent blindfolded AS. He forced her to smoke methamphetamine. If AS did not comply with Respondent, she was punched. Once AS was tied to the bed, blindfolded and forced to smoke methamphetamine, Respondent sexually assaulted her. From the time of his first assault until he was finally arrested for kidnapping on August 13, 2016, Respondent repeatedly physically and sexually assaulted AS. He forced her to use methamphetamine regularly. He kept her up for

days, and then assaulted her while she was unconscious. Respondent placed ads on Craigslist where he advertised that a 20 or 22 year old female was looking for “gang bangs.” Respondent would bring AS to hotels where other men would be allowed to have sex with AS, not because she consented, but because Respondent arranged it. Respondent would video tape other men having sex with AS. Respondent would also “join in” and also have sex with AS. Sexual assault was the primary motivator of Respondent’s actions.

5. The Court concludes that Respondent had sexual intent, his actions were sexually motivated and the kidnapping offense fits within the definition of harmful sexual conduct.
6. **“Course of harmful sexual conduct.”** This court needs to also determine where there is a “course” of harmful sexual conduct. This court has received clear and convincing evidence that there has also been a “course” of harmful sexual conduct. This court has received clear and convincing evidence that Respondent has two convictions from offenses committed in 1987 where he sexually assaulted both victims. Both offenses included tying up the victims and anally raping them. Both victims had been gagged. One of the victims had been blindfolded. Respondent’s behavior and pattern towards women has not changed since these convictions.
7. This court has received evidence that Respondent has had numerous “relationships” with significant others. While Respondent has not been charged with or convicted of offenses committed during these relationships, and the Court acknowledges that this evidence may have less weight, convictions are not necessary to prove a habitual course of sexual misconduct. Rather the courts look to the person’s history of sexual misconduct behavior regardless of the existence of any convictions for that behavior.<sup>2</sup> Respondent’s actions towards women with whom he is in a relationship would satisfy elements of criminal sexual conduct charges. Respondent physically and sexually assaulted women with whom he was in a relationship. Respondent also sexually assaulted young girls he hired to work for him. Additionally, he sexually assaulted young women by drugging them to the point of being unconscious. The women whom

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<sup>2</sup> *In re Monson*, 478 N.W.2d 785, 789 (Minn. Ct. App. 1991) (stating “statute does not address convictions but behavior”).

Respondent sexually assaulted did not come forward of their own accord. They were discovered due to an investigation of an unsolved missing person. Respondent's manner in which he intimidates and threatens women squelches them from reporting his offenses.

8. The Minnesota Court of Appeals has also found that a Respondent's "many repeated, emotionally scarring assaults on [one] six-year-old victim alone constitute a course of harmful sexual conduct."<sup>3</sup> Similarly, Respondent inflicted repeated, emotionally scarring assaults on AS. The conduct inflicted upon AS alone support a finding that there is a course of harmful sexual conduct. The Court concludes that this element is satisfied by clear and convincing evidence.
9. **Sexual, personality, or other mental disorder.** The second element of the SDP law requires that the person manifest "a sexual, personality, or other mental disorder or dysfunction." Minn. Stat. § 253D.02, subd. 16(a)(2). The Supreme Court has required a present disorder or dysfunction which does not allow the person to adequately control their sexual impulses. *In re Linehan (Linehan IV)*, 594 N.W.2d 867, 876 (Minn. 1996). Both Drs. Gilbertson and Pascucci focused upon the diagnosis of antisocial personality disorder for purposes of this statutory element.
10. A person does not need to be "mentally ill" to satisfy this prong of the sexually dangerous person definition. The Minnesota Supreme Court held Antisocial Personality Disorder supports civil commitment as a sexually dangerous person. *Linehan III*, 557 N.W.2d 171, (Minn. 1996), *vacated and remanded*, 522 U.S. 1011 (1997), *aff'd as modified*, 594 N.W.2d 867 (Minn. 1999). Clearly, precedent has been established that Antisocial Personality Disorder diagnosis satisfies the second prong of the definition of a sexually dangerous person. The Court concludes that this element is satisfied by clear and convincing evidence.
11. **Respondent is highly likely to engage in acts of harmful sexual conduct in the future.** The Supreme Court has held that the third statutory requirement is satisfied when a person is "highly likely" to reoffend. *Ince*, 847 N.W.2d 13, 22. The Supreme Court defined "highly likely" as "difficult, if not impossible, for the person to control

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<sup>3</sup> *In re Woltjer*, No. A06-2355, 2007 WL 1675030, at \*4 (Minn. Ct. App. Jun. 12, 2007) (unpublished). Appendix p. A-004 – A-007.

his dangerous behavior.” *Id.* at 20 (quoting *Linehan IV*, 594 N.W.2d at 875). The Supreme Court also held that “highly likely” “cannot be defined by a numeric value,” but offered some guidance that “at least a 50.1 percent probability” would not be “highly likely.” *Id.* at 20, 22.

12. The Supreme Court has long endorsed a multi-factor analysis for predicting harmful sexual conduct. *Id.* at 24. In *Ince*, the Supreme Court clarified that the prediction of harmful sexual conduct continues to include consideration of the *Linehan* factors in addition to the actuarial assessment evidence. *Id.* The Court must make a “good faith attempt [...] to isolate the most important factors in predicting harmful sexual conduct” through thorough consideration of all relevant evidence. *In re Linehan (Linehan III)*, 557 N.W.2d 171, 189 (Minn. 1996). In other words, when predicting harmful sexual conduct, the Court must attempt to isolate the most important factors by considering all relevant evidence including actuarial and clinical evidence and the *Linehan* factors. *Ince*, 847 N.W.2d at 23. The Court has the authority to determine what evidence, including the *Linehan* factors, is relevant to the determination of highly likely. *Id.* at 24.
13. Both examiners utilized an actuarial, the Static-99R. This instrument relies a great deal on a person’s past offending behavior. The court heard testimony that the Static-99R has been peer-reviewed and is well respected as the best tool when ascertaining the level of risk of sexual re-offense. Dr. Gilbertson scored Respondent in the high range with a score of 7. Dr. Gilbertson testified the percentile rank of a person with a score of 7 on the Static-99R is 97.2%. Despite the high rank, the appellate court has noted testimony that actuarial tools are likely to underestimate actual recidivism.<sup>4</sup> Given the high score on the Static-99R and the fact that this might under-represent Respondent’s actual risk, there is clear and convincing evidence that Respondent is highly likely to sexually re-offend.
14. Clear and convincing proof will be shown when the truth of the facts asserted is “highly probable.” *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). This standard requires “more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *Id.* There is no exact definition or numerical value assigned to

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<sup>4</sup> *In re Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011).

“highly likely.” The best definition available is “difficult, if not impossible, for the person to control his dangerous behavior.” *Ince*, 847 N.W.2d at 20. Yet, “highly likely” “cannot be defined by a numeric value.” *Id.* at 20, 22.

15. Aside from the actuarial or risk assessment tools, it is well established that past behavior is the best predictor of future behavior. That is one of the reasons the forensic examiners view a person’s entire offending history. When viewing Respondent’s past behavior, starting in 1987, he continues to have the common thread of assaulting women. He takes pride in his past criminality and uses his past to threaten and intimidate his victims. Respondent is the sole and primary suspect in a homicide in 1993. A 17 year old girl, Hang Lee, went missing one night when she left her home to meet Respondent for an interview. Respondent was the last person to see Ms. Lee alive. He bragged to acquaintances that he raped an Asian girl then killed her. Respondent made AS aware of this by telling her Ms. Lee walked into his business but never came out. He threatened his kidnapping victim, AS, that he would do the same to her that he did to Ms. Lee. He indicated he wasn’t caught for the murder of Ms. Lee, and insinuated he knew how to kill again without getting caught. Respondent specifically told AS that a Sawzall would cut through bone. Respondent’s past behavior clearly indicates that he is highly likely to sexually reoffend.
16. There is clear and convincing evidence that Respondent meets the criteria for commitment as an SDP under Minn. Stat. §253D.02, Subd. 16, and as clarified through case law.

#### Sexual Psychopathic Personality Statute

17. In *Linehan IV*, the Minnesota Supreme Court identified the distinction between the SPP statute and the SDP statute. *Linehan IV*, 594 N.W.2d 867. The SPP statute is intended for the person who demonstrates an utter lack of power to control their sexual impulses while the SDP statute is aimed at the person who retains “enough control to plan, wait, and delay the indulgence of their maladies until presented with a high probability of success.” *Id.* at 875. In other words, the volitional threshold to commit a person as an SPP is higher than to commit a person as an SDP.
18. In order to be committed as an SPP, Petitioner must prove, by clear and convincing evidence that Respondent has: 1) such conditions of emotional instability, or

impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts; 2) a habitual course of misconduct in sexual matters; 3) an utter lack of power to control his sexual impulses; and as a result 4) is dangerous to other persons. Minn. Stat. § 253D.02, subd. 15.

19. **“The existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters. . .”** Minn. Stat. §253D.02, Subd. 15. It is not required that a Respondent display all of these characteristics. It is sufficient if one or more of the factors are present. Respondent’s criminality and past behavior highlights his lack of customary standards of good judgment
20. The SPP statute requires one of four conditions identified in the statute to be present. Both experts opined that Respondent possesses at least one of these four conditions.
21. Respondent treated his victims with utter disregard for their respect, dignity or autonomy. Respondent forced women with whom he has a relationship to wear the clothes of his choosing. He cut off communication with their family and friends and drove a wedge in relationships between his significant other and their family. Respondent particularly selected women who are around the age of 17 and 18, who have a strained relationship with the parents to the point where they may be living with people other than their parents. Respondent has physically and sexually attacked his significant others. He has demeaned them by forcing them to be outside without clothes on and locking them out of a residence. When significant others attempt to break off their relationship with Respondent, he has stalked them. He has broken into their homes and either stole from them or damaged their property.
22. Respondent also clearly displays that he fails to appreciate the consequences of personal acts. He blames the victims of his offenses for being in prison, rather than accepting responsibility for his action. Respondent continues to break the law, swindle people out of cars or other items, use controlled substances and sexually assault women despite being convicted for these offenses and serving sentences for them.
23. The Court concludes that he lacked customary standards of good judgment. The Court



concludes that this element is satisfied by clear and convincing evidence.

24. **Habitual Course of Sexual Misconduct.** The SPP statute requires a habitual course of misconduct in sexual matters. The statute and the *Pearson* standard require that Respondent engaged in a habitual course of misconduct in sexual matters and that the nature of the harm is sufficiently harmful to justify commitment. Minn. Stat. § 253D.02, subd. 11; *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 555, 287 N.W. 297, 302 (1939), *aff'd*, 309 U.S. 270, 60 S.Ct. 523, 84 L.Ed. 744 (1940). A habitual course of misconduct “has been defined to require evidence of a pattern of similar conduct.” *In re Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006). Courts are to look at both frequency and similarity of conduct. *In re Blodgett*, 510 N.W.2d at 915; *In re Bieganowski*, 520 N.W.2d 525, 529-30 (Minn. App. 1994), review denied (Minn. Oct. 27, 1994).
25. Respondent’s sexual misconduct was repetitive. He started in the 1987 and committed three sexual offenses in a very short time span. His first charged criminal sexual conduct occurred on March 31, 1987. The second charged criminal sexual conduct occurred on April 9, 1987 and an attempted criminal sexual conduct occurred on May 19, 1987. He assaulted AS almost daily.
26. Respondent’s offending behavior is also similar from one victim to the next. He uses ligatures to bind his victims whether they are strangers or women he knows. He also uses blindfolds or gags on his victims. Respondent frequently uses drugs to gain compliance with his victims. Respondent seems to have three types of victims: strangers, acquaintances and women with whom he establishes a relationship. For strangers, he uses the guise of an interview to lure and gain access to vulnerable young women. For his acquaintance victims, he selects victims who are approximately 18 years old, in a strained relationship with their parents and who are in need of making money. For women with whom he has a relationship, Respondent controls their lives by cutting off access to the victim’s family and friends. He tells them what to wear and limits where they can go. Respondent either threatens or uses physical force against his victims.
27. Both experts opined that Respondent has engaged in a habitual course of sexual misconduct and the Court agrees.

28. **Utter lack of power to control sexual impulses.** Within this element, case law has provided multiple means of evaluating whether an individual has the required utter lack of control over their impulses.
29. The Minnesota Supreme court iterated what courts should consider when determining whether an offender has an utter lack to control his sexual impulses in *In re Blodgett*.<sup>5</sup> The factors to consider include the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and his victims, and the offender's attitude and mood. Applying the *Blodgett* factors, Respondent clearly has an utter lack of control over his sexual impulses. Respondent's sexual assaults were brutal in nature. He not only physically restrained his victims, he threatened and physically assaulted them to ensure compliance. The degree of violence Respondent utilized against his victims was high. His victims were hospitalized as a result of the violence he inflicted upon them. Respondent's attitude towards his victims was one of indifference or disdain. Respondent told AS that she was causing him too much trouble when he indicated they were going to leave the state and head to Colorado where he would kill her. Clearly, applying the *Blodgett* factors, Respondent has an utter lack of power to control his sexual impulses.
30. The Minnesota Court of Appeals held if a person fails to remove himself from situations that provide opportunity for similar offenses, or that trigger the impulsive behavior, this demonstrates a lack of control.<sup>6</sup> The court In *Bieganowski* indicated drinking alcohol could qualify as the trigger or precursor. Respondent's use of drugs in his offenses is well established. He has convictions for controlled substances as well as a marijuana grow operation. Respondent regularly used methamphetamine during his offenses against AS, and traded her body for methamphetamine. When given a chance to receive treatment for his substance use in prison, he did not take advantage of that opportunity. Respondent was heavily steeped in drug culture, and his prison phone calls shows he still remains in this culture with no effort to stop his drug use. Recently, while in prison, Respondent attempted to have his own daughter purchase marijuana. When she would not do so, he tried to convince the mother of 2 of his children, and then his good friend

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<sup>5</sup> *In re Blodgett*, 510 N.W.2d 910 (Minn. 1994).

<sup>6</sup> *In re Beiganowski*, 520 N.W.2d 525 (Minn. Ct. App. 1994).

to purchase the marijuana. If not committed, Respondent is likely to continue his drug use, a definite trigger for his sexual assaults. Clearly, Respondent fits within the type of offender contemplated by the *Bieganowski* court. His drug use is wrapped up in his offending, and he refuses to receive treatment for his drug use.

31. Both examiners testified that Respondent does not acknowledge that he has a problem. Respondent appears to deflect blame or indicates that the victims are over stating what happened during the offense. Without minimal acceptance or insight, there is no internal mechanism to stop Respondent from continuing his sexual offending. This is the epitome of an utter lack of control. The Court concludes that this element is satisfied by clear and convincing evidence.
32. **Is dangerous to other persons.** Finally, the SPP statute requires a finding of dangerousness to others. There is little doubt that Respondent is dangerous to other persons. There is no evidence to contradict this fact.
33. There is clear and convincing evidence that Respondent meets the criteria for commitment as an SPP under Minn. Stat. §253D.02, Subd. 15, and as clarified through case law.

#### Less Restrictive Alternative

34. Minn. Stat. § 253D.07, subd. 3 provides that if the Court finds that Respondent is an SDP and/or SPP, the Court shall commit him to a secure treatment facility unless he establishes by clear and convincing evidence that a less restrictive treatment program is available, is willing to accept him under commitment, and is consistent with his treatment needs and the requirements of public safety. A “Secure Treatment Facility” means the Minnesota sex offender program facility in Moose Lake and any portion of the Minnesota sex offender program operated by the Minnesota sex offender program at the Minnesota Security Hospital, but does not include services or programs administered by the Minnesota sex offender program outside a secure environment.” Minn. Stat. §253D.02, Subd. 13.
35. When reviewing Respondent’s exhibits, it appears he is attempting to rely on a less restrictive alternative that is simply not available to him. Respondent submitted Exhibit 100 which is identified as the “Less Restrictive Alternative Plan of Mark Wallace.” The plan relies heavily on supervision and cooperation with the Minnesota sex offender

program (MSOP) and/or the reintegration agent of MSOP. The legislature when drafting Minn. Stat. 253D.07, Subd. 3 was clear that this court cannot order Respondent to cooperate with services or programs of the MSOP outside the secure environment. Exhibit 101 is identified as client provisional discharge management and supervision of the Minnesota Sex Offender Program. This type of supervision is not available to Respondent until he has completed the sex offender program and the Commitment Appeal Panel finds provisional discharge is appropriate.

36. The Court of Appeals has previously opined that provisional discharge planning that Respondent is attempting to rely on is not available to Respondents at the initial commitment.<sup>7</sup> The court of appeals indicated “the alternative that Anderson identified is the later, less-restrictive stage of the MSOP. This program offering is available to Anderson, but only after he has entered the MSOP and a judicial appeal panel determines that transfer to the less-restrictive stage of treatment is appropriate.”<sup>8</sup> The provisional discharge plan and reintegration agent services are simply not available to Respondent now. When he successfully moves through the Minnesota sex offender program (MSOP) and he can reduce his risk, only then would a less restrictive treatment be appropriate.
37. When analyzing whether there is a lesser restrictive alternative, the Respondent must establish “by clear and convincing evidence that a less restrictive treatment program is available, is willing to accept the Respondent under commitment, and is consistent with the person’s treatment needs and the requirements of public safety.” Minn. Stat. §253D.07, Subd. 3. As discussed above, a lesser restrictive alternative is not available to Respondent and there was insufficient testimony that treatment is available to Respondent.
38. There was also testimony that no sex offender program has accepted Respondent. This court received credible testimony from Corey Kohan, supervisor with Anoka County Corrections. Mr. Kohan supervises agents who monitor sex offenders on probation. Mr. Kohan testified that he spoke with the director of the Alpha sex offender program, which

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<sup>7</sup> *In re the Civil Commitment of Anderson* 2012 WL 4329231 (Minn.App. September 24, 2012) Appendix p.A-030 – A-037.

<sup>8</sup> *Anderson* at \*9, emphasis added. Appendix p.A-030 – A-037. Quote on p.A-036

is the only inpatient sex offender program in Minnesota. There are many barriers to Respondent being accepted into the Alpha program. Mr. Kohan testified that Respondent would have to admit he has sexual misconduct that he needs to work on before he would be accepted into Alpha. The treatment at Alpha is \$98.00 per day plus room and board. The Department of Corrections does have a grant to fund three spots for the entire state. However, there is a waiting list for at least one year to get a grant-funded spot. Once in treatment it takes roughly 12-18 months to complete the Alpha program. With Respondent's expiration of probation in February of 2021, Respondent will not complete the inpatient portion of the program let alone any outpatient aftercare follow up within the short time he has on probation. Mr. Cohan also testified that Alpha has never accepted a person into their program who is under civil commitment as a person who is sexually dangerous person or a sexual psychopathic personality. Finally, according to the director of the Alpha program, Respondent has not been accepted into their program.

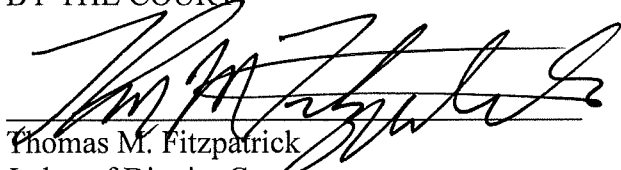
39. When considering Respondent's treatment needs, only MSOP is sufficient to treat Respondent. Respondent has never received sex offender treatment. After his convictions for criminal sexual conduct perpetrated in 1987 Respondent did not receive sex offender treatment in prison. He did not participate in sex offender treatment after his release from prison. There is no reason to believe he will do so now. He appears to have a lack of insight into his dangerous behavior, or how it impacts his victims. Dr. Gilbertson opined that Respondent does not believe "that he has a specific problem, vulnerability, or compromised sexual control issue[s] that he needs to identify, understand, and address in an appropriate relapse prevention plan." Ex. 36-000017-18. There has been no intervening factor to stop Respondent's offending pattern. As an untreated sex offender, his offending patterns require intensive treatment in a secure setting.
40. The only appropriate treatment for Respondent is commitment to the secure setting of the Minnesota sex offender program. That is the only treatment option that will sufficiently protect the public. Respondent has not met his burden regarding a less restrictive treatment, thus this court must commit Respondent to the Minnesota Sex Offender Program.

**ORDER:**

IT IS ORDERED THAT:

1. Pursuant to Minnesota Statutes section 253D.07 the Respondent is committed to the Minnesota Commissioner of Human Services for treatment in the Minnesota Sex Offender Program, located at Moose Lake, and St. Peter, Minnesota, as a person who is a sexually dangerous person and as a sexual psychopathic personality.
2. The Anoka County Sheriff shall take custody of the Respondent and transport him from the Minnesota Correction Facility - Stillwater to the Minnesota Sex Offender Program at Moose Lake, DHS campus, 1111 Highway 73, Moose Lake, MN 55767 forthwith.
3. The court administrator shall promptly provide copies of the Petition, the attachments to the petition, and the reports by Dr. James H. Gilbertson, Ph.D., L.P., court appointed examiner and Dr. Anne Pascucci, second examiner, to the Minnesota Sex Offender Program.
4. The Anoka County Attorney's Office shall provide a copy of the exhibits 1 through 40, as admitted into the record in these proceedings, to the Minnesota Sex Offender Program to assist the facility in its evaluation and treatment of the Respondent.
5. The head of the Minnesota Sex Offender Program shall retain a copy of the order and shall acknowledge receipt upon the original, which shall be filed with the court.
6. The Rights of Patients provided at Minn. Stat. §253B.03, subject to the limits set forth in Minn. Stat. §253D.19 are incorporated into this order by reference.

BY THE COURT:

Date: 02-03-2020  
Thomas M. Fitzpatrick  
Judge of District Court