

INTERVIEWING AND MAINTAINING COMMUNICATION WITH YOUR CLIENT

**Natalie Tarantino, Staff Attorney, Snohomish County Public Defender
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Mental health worker charged with abusing teen in his care

Herald staff

Monday, February 22, 2016 8:53pm | [LOCAL NEWS](#) [CRIME](#) [EVERETT](#) [LOCAL NEWS](#)
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EVERETT — A mental health worker is charged with sexually assaulting a 13-year-old client and remained jailed on \$250,000 bail.

Snohomish County deputy prosecutor Robert Grant requested that Lyndon Boyd be prohibited from being around children unsupervised. Boyd allegedly told Lynnwood police detectives that he hoped to keep his job at Compass Health.

Boyd is no longer working for the company, a spokeswoman confirmed Monday.

Prosecutors charged Boyd, 27, late last week with second-degree child molestation. Boyd was arrested earlier this month after the patient's mother reported that she found her half-dressed son sitting on Boyd's lap.

The boy was receiving mental health services from Compass Health, and Boyd was tasked with working with the teen's family to identify his needs. Boyd agreed to wake the boy up to ensure that he made it to school on time.

The teen reportedly told detectives that Boyd made inappropriate comments the first day. The defendant allegedly disrobed in front of the teen at a public pool and asked the patient if he'd seen his penis, Grant wrote in charging papers. A week later the teen woke up to Boyd lying on his bed. The boy told detectives Boyd fondled him and pulled him onto his lap.

Boyd allegedly admitted to detectives his behavior wasn't appropriate. He denied fondling the boy.

Detective withheld evidence, so judge drops sex charge

By Diana Hefley

Tuesday, December 6, 2016 5:15am | [LOCAL NEWS](#)

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LYNNWOOD — Lynnwood police officials continue to investigate one of their detectives whose mishandling of evidence prompted a Snohomish County judge to dismiss a felony sex charge against a former mental health worker accused of abusing a teenage patient.

Superior Court Linda Krese tossed out a child molestation charge after it was brought to her attention that the lead detective, Jackie Arnett, failed to turn over an audio recording and related reports of a 20-minute interview with the teen. The judge was told the boy's statements during that Feb. 18 interview were inconsistent with others he'd made a couple of weeks earlier.

There was no physical evidence in the case against Lyndon Boyd, a former Compass Health employee. Prosecutors alleged that Boyd fondled a 13-year-old client during a home visit earlier this year. The boy also claimed that Boyd talked to him about sex and disrobed in front of him at a public pool.

Boyd denied abusing his client.

The prosecution rested on the credibility of the boy and other witnesses. Krese found that the Feb. 18 interview could have been used to call into question the teen's testimony. It also could have raised questions about Arnett's credibility for her failure to properly report the interview, Krese said.

There's no way to know what weight a jury would have given that evidence.

The defense discovered the interview in July, a few days into Boyd's second trial — but some three months after his first trial. A jury in April couldn't reach a verdict after about a week of testimony that included the teen, Arnett and Boyd.

“The failure of Detective Arnett to disclose the recorded interview and her report prejudiced Mr. Boyd in the first trial,” Krese concluded.

The second trial was scheduled to begin July 8. The day before, Snohomish County deputy prosecutor Robert Grant produced two new statements from the teen, written in May and June. The court agreed to allow the defense to re-interview the boy and his mother based on the new statements.

Defense attorney Natalie Tarantino also requested the recorded interview Arnett conducted with the boy about another separate sexual assault allegation unrelated to Boyd. Arnett had testified at trial that she'd taken a report about the incident. The court ordered a copy of the interview to be turned over to Tarantino.

The public defender was provided a link that, to her surprise, contained the undisclosed Feb. 18 interview and picture of the detective's report, both related to the allegations leveled against Boyd. Some of his comments contradicted what the teen told Arnett on Feb. 1.

“I don't know whether it was purposeful or ineptitude. Her lack of training for investigating these serious cases is shocking,” said Tarantino, a longtime public defender.

Krese declared a second mistrial when it was clear that neither the prosecutor nor the defense had been provided all the discovery.

The judge made it clear in her written findings dated Oct. 24 that she didn't find any fault with Grant. He didn't know about the undisclosed interview, even though Arnett had been asked in March to provide a complete copy of her report to the deputy prosecutor.

Arnett was called to testify in front of Krese to explain why she failed to turn over evidence.

The detective explained that there were ongoing problems with New World Systems, the county's beleaguered emergency dispatch and records-keeping system. Police and firefighters alike have complained about the multimillion-dollar system that has resulted in delayed responses and technical glitches.

Arnett said that she kept a back-up of all her work because of those problems. She said she didn't check her back-up materials when Grant asked her to make sure she'd sent him everything.

"She appeared to the court to be deliberately engaged in obfuscation with regards to providing discovery in this matter," Krese found. "The court does not find Detective Arnett's reported inability to recall that the February 18, 2016, recorded interview even occurred to be credible, given the number of times she was asked about her work on this case and her presence at the first trial."

Three days later prosecutors disclosed that Arnett had recorded another interview in March that also had not been turned over. In the interview the teen expressed concerns that a neighbor child might be being abused. The interview was conducted when Arnett went to the teen's home to take photographs at the prosecutor's request.

"It is unclear to the court whether Detective Arnett has disclosed all discovery materials or all of her contacts with (the teen) and other witnesses," Krese found.

Krese concluded that the mishandling of evidence in the case amounted to governmental misconduct. The judge said Arnett's failure to turnover the Feb. 18 materials "represents, at least, gross negligence on her part in failing to comply with her duty to provide complete discovery. The court is not persuaded that she acted in good faith in providing discovery in this matter."

The judge dismissed the charge against Boyd.

He'd been held in jail for five months. The state in June denied his application to work as a mental health professional based on the allegations. Boyd now is working as an administrative assistant with Snohomish County

Public Defender Association.

“We are happy for Mr. Boyd but he was not fully vindicated as we would have hoped because we didn’t have a fair trial,” Tarantino said. “He’s always maintained his innocence.”

Snohomish County Prosecuting Attorney Mark Roe said his office isn’t pointing fingers at anyone. Sex crime investigations are complicated and often generate voluminous discovery.

“We feel responsible, regardless of who caused it,” Roe said.

Lynnwood Deputy Chief Bryan Stanifer, who was acting chief at the time of the judge’s ruling, called for an administrative investigation into Arnett’s handling of the case. That could wrap up by the end of the year.

The Daily Herald did not contact Arnett directly after being told by the police department that she isn’t allowed to talk about the case while the internal investigation is underway.

She continues to work as a detective, investigating crimes against persons, including sexual assaults and homicides, Lynnwood police Cmdr. Steve Rider said. Arnett has been with the department since 2007. She’s been assigned to investigations since 2011.

She has a solid reputation, Rider said.

“She historically has done outstanding work and we’re still looking into what happened this time,” he said. “Judge Krese’s ruling is not indicative of the work Detective Arnett is known for.”

Lynnwood police came under fire in 2011 for how they handled an investigation into a 2008 rape. An 18-year-old reported being tied up, threatened with a knife and raped. Officers questioned the teen’s story and she ended up being charged with making a false report.

Lynnwood police reopened her case in 2011 when a photograph of the woman and her identification card were found with a serial rapist caught in Colorado. Marc O’Leary later admitted that he raped the teen and another woman while living in Mountlake Terrace.

The woman sued the city and eventually settled a lawsuit for \$150,000.

“We do thorough and competent investigations 99 percent of the time. A couple of these are anomalies,” Rider said.

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 16-1-00482-7
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW,
)	AND ORDER OF DISMISSAL
LYNDON BOYD,)	
)	
Defendant.)	

On July 21, 2016, a hearing was held on the defendant's CrR 8.3(b) motion to dismiss. The court considered testimony, arguments and the submitted memoranda of counsel. Being fully advised, the court now enters the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

The court finds that:

1. Mr. Boyd was charged by the state with Child Molestation in the Second Degree based on allegations made on February 1, 2016 by I.B., his patient through the Compass Health wraparound program. The affidavit of probable cause was filed on February 19, 2016. Arraignment was held on February 22, 2016. Trial was scheduled for April 1, 2016. Mr. Boyd

has been in custody since his arrest on February 1, 2016.

2. Discovery was provided to the defense in early March of 2016 and included the following materials:

- a. Detective Arnett's initial report;
- b. A recorded interview of I.B. from February 1, 2016;
- c. A recorded interview of Mr. Boyd from February 1, 2016;
- d. Some records from Compass Health related to I.B.'s treatment;
- e. Written statements produced by Maureen Blue on February 1, 2016;
- f. A police report from Officer Beckstead dated February 1, 2016.

3. On March 11, 2016, the parties exchanged emails about the defense request for the reports related to I.B.'s claim of a separate assault in the past. The Detective is copied on the response from the prosecutor, Mr. Grant, which reads as follows: "So I just got off the phone with Detective Arnett. And she said that there was never a report made about what happened when he was six, and can't find a report made anywhere in any of her systems. So I don't have anything in my possession or control regarding that matter."

4. The defense received some follow-up reports written by Detective Arnett in March of 2016 that outlined actions she had taken in the case in March of 2016, to include taking photos of the Blue home and the Lynnwood pool, and interviews with Compass Health employee witnesses.

5. A CrR 3.5 hearing was conducted on March 25, 2016. At that hearing, Detective Arnett referred to her report and there were issues noted as to whether the same report had been provided to the defense in discovery. She was asked to provide a complete copy of her report by the prosecutor. The February 18, 2016 follow up interview with I.B. was not provided.

6. On March 25, 2016, Detective Arnett scheduled a follow up interview with I.B. for that day at the prosecutor's request to address the issue of I.B. denying at the defense interview that his penis had been touched by Mr. Boyd. She played him a portion of his initial recorded statement to her from February 1, 2016 and a portion of the defense interview and he indicated that he "forgot" at the defense interview that his penis had been touched. A follow up report from the Detective as well as a recorded interview with I.B. from that day was provided to the defense as discovery.

7. This case was tried the week of April 4, 2016, with the Honorable Judge Linda Krese Presiding, and a mistrial was declared on April 8 2016 when the jury deadlocked. Detective Arnett was designated as the state's managing witness and was present for the entire trial. I.B. was asked at trial about his prior interviews in this case and did not mention the February 18th interview, nor the March 11th interview. Detective Arnett was asked about what actions she took on various dates in relation to this case when she testified and likewise did not mention the February 18th interview, nor the March 11th interview.

8. The re-trial was scheduled for July 8, 2016, past the 60 day speedy trial rule, due to witness availability issues. Mr. Boyd signed a waiver of speedy trial to accommodate that date. Trial commenced on July 8, 2016 again with the Honorable Judge Linda Krese presiding.

9. On July 7, 2016, the state disclosed and produced two new written statements made by I.B. that were made in relation to this case in May and June of 2016. The Detective wrote a short report related to the collection of those two statements and indicated that they were provided to the prosecutor's office in June of 2016. At a hearing on July 8, 2016 to address the late discovery, the court ordered that the defense be permitted to re-interview I.B. and his mother about the new information. Those interviews occurred on July 11, 2016 essentially over an

extended lunch hour in recess from trial.

10. On July 11, 2016, the defense requested a copy of the recorded interview Detective Arnett conducted on an unknown date with I.B. in relation to a separate allegation of sexual abuse that he had made not related to Mr. Boyd or Compass Health. The Detective had testified at the first trial that she had taken a report from him about that incident. The defense had been requesting that information from the prosecutor prior to the second trial. The court ordered that it be turned over to the defense, and a copy of the recorded interview was provided on the afternoon of July 11, 2016 to both the defense and the court.

11. Upon review of that recording after trial recessed for the day, it was clear that on that same day, Detective Arnett had conducted a recorded interview with I.B. in relation to the Boyd case and that defense had never been provided with that interview.

12. Defense counsel was provided during the late evening of July 11, 2016, a link to the recorded interview related to this case and a picture of the Detective's report about the follow-up interview, which had occurred on February 18, 2016. Neither had previously been disclosed by the Detective to either party.

13. The previously undisclosed interview from February 18, 2016, is approximately twenty minutes long and provides material facts that had not been previously disclosed as well as potential impeachment against I.B. in the form of inconsistent statements. In relevant summary:

- a. I.B. claims during this interview that he had raised the issue of how to deal with his pubic hair to Mr. Boyd. In the interview on February 1, 2016, he had claimed that Mr. Boyd raised sexual topics out of the blue with him whenever they were alone.
- b. I.B. indicated that when Mr. Boyd answered his question about pubic hair that he

found the answer uncomfortable so never asked him questions about private stuff again. This statement contradicts I.B.'s testimony at trial about his continuous questions to Mr. Boyd about private/puberty matters.

- c. I.B. claims for the only time during this interview that on an occasion separate from February 1, Mr. Boyd had laid in his bed with him and pretended to be asleep in an effort to wake I.B. up and that Maureen Blue had witnessed this.
- d. I.B. claims in this interview that the first time Mr. Boyd came to wake him up that he was awake and dressed in anticipation of his visit and so that Mr. Boyd would not see his messy room. I.B. testified to this information at the first trial, but related it to Cagney, the other counselor's first wake-up visit to his home, not Mr. Boyd's first wake-up visit.

14. Due to the new information and its late disclosure to the defense, defense counsel notified the court of the issues on July 12, 2016, when trial reconvened. The court declared a mistrial and released the jury venire.

15. Detective Arnett was called to testify by the state to explain why the interview and related report were not turned over until this date. The court does not find Detective Arnett's testimony credible as to why the materials were not turned over. She testified both that she was aware of systemic problems with the new system and kept a back-up of all of her work because of those problems, but that she did not check her back up materials when asked by the state to make sure she had turned everything over on this case. She appeared to the court to be deliberately engaged in obfuscation with regards to providing discovery in this matter.

16. The court does not find Detective Arnett's reported inability to recall that the February 18, 2016 recorded interview even occurred to be credible, given the number of times

she was asked about her work on this case and her presence at the first trial.

17. On July 15, 2016, the state disclosed that Detective Arnett had recorded another interview with I.B. on March 11, 2016 that would be provided to the defense.

18. On July 18, 2016, the defense received a copy of the March 11, 2016 recorded interview Detective Arnett conducted with I.B. The interview is about I.B.'s concerns that a neighbor child is being sexually abused by the child's father. The interview occurs when Detective Arnett has come to the Blue home to take photographs at the prosecutor's request for the Boyd case but is not mentioned in her written report.

19. It is unclear to the court whether Detective Arnett has disclosed all discovery materials or all of her contacts with I.B. and other witnesses.

20. It is clear to the court that the Snohomish County Prosecutor's office did not have knowledge of the undisclosed materials.

II. CONCLUSIONS OF LAW

The court concludes that:

1. Governmental misconduct occurred in this case. Detective Arnett's failure to turn over the February 18, 2016 recorded interview with I.B. and her related report represents, at least, gross negligence on her part in failing to comply with her duty to provide complete discovery. The court is not persuaded that she acted in good faith in providing discovery in this matter.

2. The undisclosed recorded interview with I.B. contained material facts that could have provided impeachment at trial with relation to his past statements and his trial testimony. The timing of the inconsistent follow-up statements, just weeks after the initial report, make

the impeachment value even greater than if the statements had been made months or years after the initial reporting of the event.

3. The undisclosed recorded interview with I.B. contained material facts that could have provided impeachment at trial of another witness, Maureen Blue, with relation to her past statements and her trial testimony.

4. The undisclosed recorded interview with I.B. could have provided impeachment at trial of the Detective for her failure to recall it or properly report it.

5. The state's case rested on the credibility of I.B. and other witnesses. The court cannot measure how much impeachment would sway a jury and so all impeachment materials are thus material.

6. The failure of Detective Arnett to disclose the recorded interview and her report prejudiced Mr. Boyd in the first trial.

7. The failure of Detective Arnett to disclose the recorded interview and her report would have prejudiced Mr. Boyd in the second trial and caused the mistrial to be declared in the second trial.

8. The failure of Detective Arnett to disclose the recorded interview and her report put Mr. Boyd in the untenable position of proceeding to trial without prepared counsel or waiving his right to speedy trial in order to give time for counsel to adequately investigate and prepare.

9. The second undisclosed recorded interview with I.B. on March 11, 2016 required follow up investigation for counsel to be fully prepared to defend his case and so also put Mr. Boyd in the untenable position of proceeding to trial without prepared counsel or waiving his right to speedy trial. Whether that interview and related facts would have been inadmissible at trial is unclear, but the interview itself is proper discovery.

10. No lesser remedy is available to the court as suppression of the evidence previously undisclosed would only advantage the state's case by depriving the defense of impeachment material.

11. Neither Deputy Prosecuting Attorney Robert Grant nor any other employee of the Snohomish County Prosecutor's Office committed governmental misconduct in their handling of the discovery issues identified above.

12. The court relies on the cases cited in the parties' briefing as well as *State v. Martinez*, 121 Wn. App 21 (2004).

ORDER

Based on these Findings and Conclusions, the defendant's motion to dismiss pursuant to 8.3(b) is GRANTED.

DONE IN OPEN COURT THIS 24th DAY OF OCTOBER, 2016.


JUDGE LINDA C. KRESE

Presented By:

Copy Received and Approved as to Form:

Natalie Tarantino, WSBA #24867
Attorney for Defendant

Robert Grant, WSBA #40449
Deputy Prosecuting Attorney

RPC 1.1

A lawyer shall provide competent representation to a client.

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RPC 1.4 COMMUNICATION

(a) A lawyer shall;

(1) promptly inform the client of any decision of circumstance with respect to which the client's informed consent, as defined in Rule 1.0A(e), is required by these Rules

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RPC 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment [1] [Washington revision] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with diligence in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer, is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] [Reserved.] [Comments adopted effective September 1, 2006.]