

FILED
SUPREME COURT
STATE OF WASHINGTON
1/25/2022 3:18 PM
BY ERIN L. LENNON
CLERK

No. 100525-3

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS POUNCY
Petitioner.

COURT OF APPEALS No. 54670-1-II
ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable James Dixon, Judge
Cause No. 19-1-00338-7

ANSWER TO PETITION FOR REVIEW

Joseph J.A. Jackson
Attorney for Respondent
2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

TABLE OF CONTENTS

A. ISSUES PERTAINING TO REVIEW..... 1

B. STATEMENT OF THE CASE 1

C. ARGUMENT..... 9

 1. The Court of Appeals correctly ruled that Pouncy was not entitled to a jury instruction on entrapment...... 10

 2. The court of Appeals correctly found that the totality of the circumstances did not support a finding of outrageous government misconduct 16

 3. The Court of appeals correctly found that, in a light most favorable to the State, the evidence presented at trial supported Pouncy's convictions for attempted rape of a child and communicating with a minor for immoral purposes 18

D. CONCLUSION 23

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

<u>State v. Athan,</u> 160 Wn.2d at 375.....	18
<u>State v. Bencivenga,</u> 137 Wn.2d 703, 709, 974 P.2d 832 (1999).....	20
<u>State v. Camarillo,</u> 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	19
<u>State v. Condon,</u> 182 Wn.2d 307, 343 P.3d 357 (2015).....	10
<u>State v. Delmarter,</u> 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....	19
<u>State v. Lively</u> 130 Wn.2d 1, 19, 921 P.2d 1035 (1996).....	16, 18
<u>State v. Salinas,</u> 119 Wn.2d. at 201.....	19
<u>State v. Sisouvanh,</u> 175 Wn.2d 607, 623, 290 P.3d 942 (2012).....	18

Decisions Of The Court Of Appeals

<u>State v. Arbogast</u> , 15 Wn. App.2d 851, 478 P.3d 115 (2020); <i>review granted</i> , 197 Wn.2d 1007, 484 P.3d 1262 (2021)...	15, 16, 23
<u>State v. Complita</u> , 2019 Wash. App.LEXIS 2205, 7-8.....	14
<u>State v. Enriquez</u> , 45 Wn. App. 580, 585, 725 P.2d 1384 (1986), <i>review denied</i> , 107 Wn.2d 1020 (1987).....	11
<u>State v. Galisia</u> , 63 Wn. App. 833, 822 P.2d 303 (1992).....	11, 13
<u>State v. Hansen</u> , 69 Wn. App. 750, 764 n.9, 850 P.2d 571 (1993).....	13
<u>State v. Johnson</u> , 12 Wn. App.2d 201, 460 P.3d 1091 (2020).....	14
<u>State v. Morgan</u> , 9 Wn. App. 757, 515 P.2d 829 (1973).....	13
<u>State v. Pleasant</u> , 38 Wn. App. 78, 684 P.2d 761 (1984).....	10
<u>State v. Ponce</u> , 166 Wn. App. 409, 269 P.3d 408 (2012).....	10
<u>State v. Solomon</u> , 3 Wn. App.2d 895, 419 P.3d 436, 444 (2018).....	18
<u>State v. Trujillo</u> , 75 Wn. App. 913, 883 P.2d 329 (1994).....	11, 14, 15, 23

State v. Walker,
11 Wn. App. 84, 521 P.2d 215 (1974).....10

State v. Walton,
64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).....19

U.S. Supreme Court Decisions

United States v. Poehlman,
217 F.3d 692, 701 (9th Cir. 2000).....13

Statutes and Rules

RAP 13.4.....1, 9, 10, 16, 18, 23

RCW 9A.16.070(3).....11

RCW 9.94A.570.....9

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether Pouncy has demonstrated that review of the decision of the Court of Appeals upholding the trial court's denial of an entrapment jury instruction is appropriate under RAP 13.4(b).

2. Whether Pouncy has demonstrated that review of the decision of the Court of Appeals finding that the trial court did not abuse its discretion by denying Pouncy's motion to dismiss for outrageous government conduct is appropriate under RAP 13.4(b).

3. Whether Pouncy has demonstrated that review of the Court of Appeals finding that sufficient evidence supported the convictions for attempted rape of a child in the second degree and communicating with a minor for immoral purposes is appropriate under RAP 13.4(b).

B. STATEMENT OF THE CASE

The Petitioner, Curtis Pouncy, was charged with attempted rape of a child in the second degree and

communication with a minor for immoral purposes after he traveled to Olympia to meet with “Alexis” a fictitious 13 year old girl who was actually undercover officers of the Washington State Patrol. CP 3. As part of a Net Nanny operation, Trooper Jake Klein created a profile in Skout, a social media dating and social media application. RP 223, 227.¹ Skout requires that a user be 18 years of age but does not conduct background checks. RP 233. For the profile, Trooper Klein took the persona of 13 year old female, who he named Alexis Harrison. RP 236.

Using a profile name of “Jeffrey,” Pouncy messaged the “Alexis” profile, and stated, “From what - - from I – what I can see, I like it. I would like to see more if – is that possible?” RP 236. Trooper Klein directed the conversation to text messaging

¹ The verbatim report of proceedings occurs in several volumes. The two volumes which include the jury trial which occurred January 28, 29, 30, 2020 and February 3, 2020, are sequentially paginated and collectively referred to herein as RP. All other volumes are referred to by RP (date).

at the point. RP 236-237. Soon after the text messaging started, Trooper Klein texted, “are you cool that I’m young?” and indicated that “Alexis” was 13, but mature. EX 3, RP 248. Pouncy continued the conversation asking, “have you done this before.” Ex 3, RP 249.

Pouncy then asked for “Alexis” to send a picture. Ex 3, RP 249-250. After Klein sent Pouncy pictures of an undercover trooper, Trooper Klein texted that Alexis was looking for “NSA” or no strings attached fun. Ex 3, RP 250, 258. Pouncy responded by asking “are you a virgin?” Ex 3, RP 258. Pouncy stated, “I don’t want to get you in trouble, and I really don’t want to get in trouble,” and then asked if “Alexis” lived at home. Ex 3, RP 259. “Alexis” responded that she did live at home, but her mother was gone at work all night. Ex 3, RP 259. Pouncy then asked about her dad, to which she responded, “he’s out of the picture.” Ex 3, RP 259.

Pouncy asked to speak to “Alexis” on the phone. Ex. 3. Trooper Jennifer Wilcox played the “Alexis” persona during

phone conversations. RP 322. In the first of three phone calls, with “Alexis,” Pouncy demonstrated that he knew plans for sex with a 13 year old were illegal by indicating that he was “scared this is some Joe Walsh shit.” RP 326. Trooper Wilcox testified that “Joe Walsh” is the host of America’s Most Wanted. RP 328. While talking about coming over to the 13 year old’s residence, Pouncy asked about whether her mom would be there. RP 326. Pouncy indicated he would bring condoms and alcohol and agreed with “Alexis” that it would be bad if she got pregnant. RP 326-327.

After the phone call, Pouncy continued text messaging with “Alexis.” Ex 3, RP 261. When “Alexis” asked if Pouncy was going to come over, Pouncy responded “yes, address.” Ex 3, RP 262. Pouncy indicated that he needed two hours to get there. Ex. 3, RP 263. Pouncy sent a photo of himself to “Alexis.” RP 263-264. Klein eventually put the meeting off until the next day, indicating that Alexis was tired. Ex 3, RP 265.

The next day, the messaging continued and Pouncy asked, “so are we going to meet tonight?” Ex 3, RP 266. After they discussed meeting at 7,” “Alexis” asked “are you going to bring condoms and Mike’s Hard like u said,” to which Pouncy responded “Yes.” Ex. 3, RP 266. “Alexis” then said, “so I know we kinda tlked about it in the call but wut r we gonna do when you get here?” Ex 3, RP 266. Pouncy respond, “well, we just play it by ear and see what happens.” Ex 3, RP 266-267. “Alexis” responded by saying “I’m looking 2 hookup 2nite lol i don’t want 2 waist my time,” to which Pouncy responded, “U won’t waste time.” Ex 3, RP 267.

In a second phone call, when asked what he wanted to do, Pouncy stated, “you know what I want to do,” to which “Alexis” indicated, “I thought you were going to teach me,” and Pouncy responded, “I am.” RP 331-332. After the call, “Alexis” asked Pouncy to say what he was going to do, and Pouncy respond, “You know what your supposed to do.” Ex 3, RP 271. “Alexis” indicated there were things she didn’t want

to do because she was small and didn't like pain, to which Pouncy responded, "Ok you Control the pace." Ex 3, RP 271-272. Pouncy later indicated, "I teach you what I can," and "slow and easy." Ex 3 RP 273.

The conversation led to a third telephone call. RP 273. That conversation, the undercover officer posing as "Alexis" said, "I don't know what you want to do or what I should expect. I'm nervous." RP 334. Pouncy responded "I will go slow. I will taste you, and you will taste me," and indicated he would tell "Alexis" how to do that. RP 334. He again told her he would go slow and indicated that "the condoms have lube on them." RP 335. When he again talked about tasting each other, she asked if he could make her orgasm and Pouncy stated, "yes, I can." RP 335.

After the conversation returned to text messaging, "Alexis" asked, "if it hurts u promise ull go slower?" and Pouncy responded "I promise." Ex 3, RP 278. Pouncy again agreed to bring condoms and alcohol. Ex 3 RP 278. Pouncy

then followed directions to go to a Texaco gas station and send a selfie prior to getting an undercover address to meet “Alexis.” RP 278-279, 333, 376, 379. He then traveled to the address provided for “Alexis,” parked down the block and walked to the residence. RP 383-384. When Detective Wilcox, posing undercover as “Alexis,” opened the door, Pouncy embraced her and attempted to kiss her. RP 336. Pouncy was arrested afterwards. He did not have condoms or alcohol on him at the time of his arrest. RP 394.

Prior to trial, Pouncy filed a motion to dismiss and a motion to suppress evidence alleging outrageous government conduct and violations of the Washington Privacy Act and Article I, §7 of the Washington State Constitution. CP 6-20. The State filed a responsive pleading which included chapter 7 of the Missing and Exploited Children’s Task Force procedures manual, the 2008 Annual Report of the Missing and Exploited Children’s Task Force, the Skout discussion between “Jeffrey”

and “Alexis” and the text messages between Trooper Klein and Pouncy. CP 21-101.

During the hearing on the motions, a declaration of Trooper Klein was admitted as well as the text messages and Skout chats. Pretrial Ex 1, 2, 3, RP (1/17/20) 8. The trial court heard testimony from Washington State Patrol Sgt. Carlos Rodriguez and Trooper Wilcox. RP (1/17/20) 10, 51. At the conclusion of the hearing, the trial court denied the motions to suppress and found that there had been no showing of outrageous government conduct. CP 104-107, RP (1/21/20) 57-66.

During trial, Pouncy indicated that he did not believe that “Alexis” was 13 and had no intention to have sex with a 13 year old. RP 411, 413, 414, 416-417. The jury found him guilty of attempted rape of a child in the second degree and communication with a minor for immoral purposes. RP 549. In a subsequent bifurcated proceeding, the jury returned special verdicts indicating that the Pouncy had previously been

convicted of a felony sexual offense and finding that Pouncy had sent someone he believed to be a minor an electronic communication for immoral purposes. RP 560.

Because Pouncy had previously been convicted of rape in the second degree and rape in the first degree, he was sentenced as a persistent offender pursuant to RCW 9.94A.570 for the attempted rape of a child in the second degree count and 60 months concurrent on the communication count. RP (2/12/20) 3-4, 6-7. In an unpublished decision, Division II of the Court of Appeals affirmed Pouncy's convictions. Unpublished Opinion, No. 54670-1-II. Pouncy now seeks review in this Court.

C. ARGUMENT

This Court will accept review when the decision of the Court of Appeals conflicts with a decision of the Supreme Court, RAP 13.4(b)(1), conflicts with another decision of the Court of Appeals, RAP 13.4(b)(2), raises a significant question of law under the Washington or the United States Constitutions, RAP 13.4(b)(3), or involves an issue of substantial public

interest that should be determined by the Supreme Court. RAP 13.4(b)(4). Pouncy has not demonstrated a basis upon which this Court should accept review.

1. The Court of Appeals correctly ruled that Pouncy was not entitled to a jury instruction on entrapment.

An appellate court reviews de novo a trial court's refusal to give a requested jury instruction when the refusal is based on a ruling of law. State v. Ponce, 166 Wn. App. 409, 416, 269 P.3d 408 (2012). However, a trial court's factual determination as to whether a jury instruction should be given is reviewed for an abuse of discretion. State v. Condon, 182 Wn.2d 307, 315-16, 343 P.3d 357 (2015). For entrapment to exist, the evidence must show that the defendant lacked the predisposition to commit the crime. State v. Pleasant, 38 Wn. App. 78, 80, 684 P.2d 761 (1984). This means that the defendant must not have any preexisting intent, inclination, or tendency toward commission. State v. Walker, 11 Wn. App. 84, 88, 521 P.2d 215 (1974). Even though a criminal design originates in a

police officer's mind, if the defendant willingly participates in a developing transaction, entrapment does not occur. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303 (1992), *abrogated on other grounds by State v. Trujillo*, 75 Wn. App. 913, 883 P.2d 329 (1994).

The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime. RCW 9A.16.070(3). The defense bears the burden of establishing the elements of an entrapment defense. Trujillo, 75 Wn. App. at 918. In order to show entrapment, a defendant must show more than mere reluctance on his or her part to violate the law. State v. Enriquez, 45 Wn. App. 580, 585, 725 P.2d 1384 (1986), *review denied*, 107 Wn.2d 1020 (1987).

In this case, the trial court denied the request for an entrapment instruction stated, "there is no evidence in this record to suggest that Mr. Pouncy was not inclined to commit the offense and there was persuasion or efforts on the part of

law enforcement to induce or convince Mr. Pouncy to commit the crime.” RP 460-461. The trial court further noted that the in order to instruct on entrapment, “there must be some evidence in the record to suggest that there was some evidence in the record to suggest that there was some amount of pressure upon the police or the government to induce the defendant to commit the crime.” RP 461.

While law enforcement posted the profile of “Alexis,” there is nothing in the record to support a conclusion that law enforcement used pressure or otherwise induced Pouncy to commit an offense that he was not predisposed to. When “Alexis” stated she was 13, Pouncy expressed no hesitation in continuing his communications with her. RP 248, EX 3. His only hesitation was his desire to not get in trouble, there was no indication that he was opposed to sex with a 13 year old. Additionally, Pouncy’s defense was not that he was induced to commit the offense, rather, he testified that he did not believe

that “Alexis” was 13 and had no intention to have sex with a 13 year old. RP 411, 413, 414, 416-417.

When determining whether to instruct a jury on the entrapment defense, “the trial court should consider the defendant’s testimony and the inferences that can be drawn from it.” State v. Galisia, 63 Wn. App. at 836; *citing*, State v. Morgan, 9 Wn. App. 757, 759, 515 P.2d 829 (1973). Inducement is “government conduct which creates a substantial risk that an undisposed person or otherwise law-abiding citizen would commit the offense.” State v. Hansen, 69 Wn. App. 750, 764 n.9, 850 P.2d 571 (1993). This requires “an opportunity plus something else – typically, excessive pressure by the government upon the defendant or the government’s taking advantage of an alternative, non-criminal type motive.” United States v. Poehlman, 217 F.3d 692, 701 (9th Cir. 2000). A police officer’s use of “the normal amount of persuasion to overcome the defendant’s expected resistance” to commit the crime “is

not entrapment, nor is the use of deception, trickery or artifice by the police.” State v. Trujillo, 75 Wn. App. at 919.

In the context of similar undercover operations, our Courts have considered the issue of whether a defendant is entitled to an instruction on entrapment. State v. Complita, 2019 Wash.App.LEXIS 2205, 7-8² (Here, the record shows nothing more than mere opportunity. Although the police engaged in deception and Mr. Complita at times expressed reluctance to engage in sexual activity with a minor, such circumstances are insufficient to support an entrapment claim); State v. Johnson, 12 Wn. App.2d 201, 460 P.3d 1091 (2020); In this case, the trial court did not abuse its discretion by finding that the facts presented at trial did not support an instruction on entrapment. The trial court did not infringe upon the right to present a defense.

The Court of Appeals correctly found that there was insufficient evidence of entrapment to support an instruction.

² Unpublished decision, not for precedential value. GR 14.1.

Unpublished Opinion at 18-19. The standard utilized by the Court of Appeals in reaching its conclusion was correct. The decision is correct even if the Court had applied the rationale of State v. Arbogast, 15 Wn. App.2d 851, 478 P.3d 115 (2020); *review granted*, 197 Wn.2d 1007, 484 P.3d 1262 (2021). In Arbogast, Division III of the Court of Appeals rejected the standard of State v. Trujillo, and applied a “some” evidence standard for considering whether an entrapment instruction should be given. The decision of the Court of Appeals meets that standard. As the Court of Appeals noted, Pouncy continued the conversations, law enforcement merely afforded the opportunity to commit the crime but there was no evidence to support an entrapment instruction. Unpublished Opinion at 19-20.

There is no basis under either the Trujillo or Arbogast standards upon which this Court should grant review. The State respectfully requests that this Court deny review under RAP

13.4(b). Alternatively, this Court should stay consideration of this petition pending its decision in Arbogast.

2. The Court of Appeals correctly found that the totality of the circumstances did not support a finding of outrageous government misconduct.

“Outrageous conduct is founded on the principle that the conduct of law enforcement officers and informants may be so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.” State v. Lively 130 Wn.2d 1, 19, 921 P.2d 1035 (1996). For police conduct to violate due process, “the conduct must be so shocking that it violates fundamental fairness.” *Id.* Examples of outrageous conduct include “those cases where the government conduct is so integrally involved in the offense that the government agents direct the crime from the beginning to end, or where the crime is fabricated by the police to obtain a defendant’s conviction, rather than to protect the public from criminal behavior.” *Id.* at 21.

“Public policy allows for some deceitful conduct and a violation of criminal laws by the police in order to detect and eliminate criminal activity.” *Id.* at 20. “Dismissal based on outrageous conduct is reserved for only the most egregious circumstances.” *Id.* In reviewing a claim of outrageous government conduct, the court evaluates the totality of the circumstances. *Id.* at 21. Factors that a court must consider when determining whether police conduct offends due process are

“whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity, whether the defendant’s reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation, whether the government controls the criminal activity or simply allows for the criminal activity to occur, whether the police motive was to prevent crime or protect the public, and whether the government conduct itself amounted to criminal activity or conduct repugnant to a sense of justice.”

Id. at 22. A trial court’s order on a motion to dismiss on the basis of outrageous governmental misconduct is reviewed

“under an abuse of discretion standard.” State v. Athan, 160 Wn.2d at 375. “Abuse of discretion requires the trial court’s decision to be manifestly unreasonable or based on untenable grounds or untenable reasons.” *Id.* at 375-76 “A trial court abuses its discretion when its decision adopts a view that no reasonable person would take.” State v. Solomon, 3 Wn. App.2d 895, 910, 419 P.3d 436, 444 (2018) (citing State v. Sisouvanh, 175 Wn.2d 607, 623, 290 P.3d 942 (2012)).

Here, the decision of the Court of Appeals correctly applied the Lively factors to conclude that the trial court did not abuse its discretion when it denied Pouncy’s motion to dismiss for outrageous government conduct. Unpublished Opinion at 23-26. The decision of the Court of Appeals followed existing precedent and correctly applied the rule. There is no basis under RAP 13.4 upon which this Court should accept review of that issue.

3. The Court of Appeals correctly found that, in a light most favorable to the State, the evidence presented at trial supported Pouncy’s convictions for attempted

rape of a child and communicating with a minor for immoral purposes.

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d. at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d

832 (1999). Pouncy continued texting with “Alexis” after having been told that she was 13 years old. RP 248; EX 3. Pouncy texted with the 13 year old persona asking if she was a virgin, discussed bring condoms and alcohol to meet her, said he could “teach” her, texted “slow and easy,” and promised he would go slower if it hurt. RP 258-259, 265-266, 271-273 ; EX 3. Pouncy also asked about the persona’s parents and whether they were present. RP 259; EX 3. When “Alexis” indicated that she was looking to “hook up” Pouncy indicated that he wouldn’t waste her time. RP 267, EX 3.

In telephone calls with “Alexis,” Pouncy demonstrated that he knew plans for sex with a 13 year old were illegal by indicating that he was “scared this is some Joe Walsh shit.” RP 326. Trooper Wilcox testified that “Joe Walsh” is the host of America’s Most Wanted. RP 328. While talking about coming over to the 13 year old’s residence, Pouncy asked about whether her mom would be there. RP 326. Pouncy indicated he would bring condoms and alcohol and agreed with “Alexis”

that it would be bad if she got pregnant. RP 326-327. During another telephone conversation, when asked what he wanted to do, Pouncy stated, “you know what I want to do,” to which “Alexis” indicated, “I thought you were going to teach me,” and Pouncy responded, “I am.” RP 331-332.

In a third phone conversation, the undercover officer posing as “Alexis” said, “I don’t know what you want to do or what I should expect. I’m nervous.” RP 334. Pouncy responded “I will go slow. I will taste you, and you will taste me,” and indicated he would tell “Alexis” how to do that. RP 334. He again told her he would go slow and indicated that “the condoms have lube on them.” RP 335. When he again talked about tasting each other, she asked if he could make her orgasm and Pouncy stated, “yes, I can.” RP 335.

Pouncy followed directions to go to a Texaco gas station and send a selfie prior to getting an undercover address to meet “Alexis.” RP 278-279, 333, 376, 379. He then traveled to the address provided for “Alexis,” parked down the block and

walked to the residence. RP 383-384. When Detective Wilcox, posing undercover as “Alexis,” opened the door, Pouncy embraced her and attempted to kiss her. RP 336.

The Court of Appeals correctly found that substantial evidence supported a finding that Pouncy had the intent to engage in sexual intercourse with “Alexis.” Unpublished Opinion, at 14-15. The evidence was sufficient for a rational finder of fact to find that Pouncy committed attempted rape of a child in the second degree. The Court of Appeals also correctly found that sufficient evidence supported Pouncy’s conviction for communicating with a minor for immoral purposes and that the jury verdict demonstrates that the jury rejected Pouncy’s claim that he believed he was engaging in adult role play as “not credible.” Unpublished Opinion, at 16. In a light most favorable to the State, sufficient evidence supported both convictions.

Pouncy does not offer any reason pursuant to RAP 13.4(b) upon which this Court should accept review of his

sufficiency of the evidence claims. The State respectfully requests that review be denied.

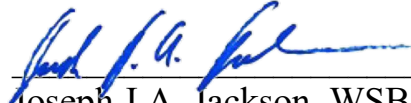
D. CONCLUSION.

For the reasons stated above, there is no basis under RAP 13.4(b) upon which review should be granted. The State acknowledges that there is a split between Division II and Division III in the Trujillo and Arbogast decisions, however, the decision of the Court of Appeals makes it clear that under either standard, Pouncy was not entitled to a jury instruction on entrapment. The State respectfully requests that this Court deny review on each of the issues raised. Alternatively, the State requests that this Court stay consideration of this motion pending its decision in the Arbogast case. This Court heard oral argument in that case on September 21, 2021, but has not issued an opinion as of the date of this writing.

Counsel certifies that this document contains 3928 words, including footnotes, but not including those portions exempted

from the word count by RAP 18.17(c), as counted by word processing software in compliance with RAP 18.17(c)(10).

Respectfully submitted this 25th day of January, 2022.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Supreme Court, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: January 25, 2022

Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

January 25, 2022 - 3:18 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,525-3
Appellate Court Case Title: State of Washington v. Curtis Pouncy
Superior Court Case Number: 19-1-00338-7

The following documents have been uploaded:

- 1005253_Answer_Reply_20220125151707SC671949_7319.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Pouncy Curtis APFR 100525 3.pdf

A copy of the uploaded files will be sent to:

- SCCAttorney@yahoo.com
- teri.bryant@lewiscountywa.gov

Comments:

Sender Name: Tressa Hayes - Email: tressa.hayes@co.thurston.wa.us

Filing on Behalf of: Joseph James Anthony Jackson - Email: joseph.jackson@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:
2000 Lakedrige Dr SW
Olympia, WA, 98502
Phone: (360) 786-5540

Note: The Filing Id is 20220125151707SC671949