

FILED

AUG 07, 2014

Court of Appeals
Division III
State of Washington

No. 32058-8-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

CASEY D. PEPPIN,

Defendant/Appellant.

Appellant's Reply Brief

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A. ARGUMENT

The remote warrantless search of Mr. Peppin's computer by law enforcement's use of enhanced peer-to-peer software was illegal under the Fourth amendment and Article I, section 7.

Respondent states in his brief that the enhanced software programs used by law enforcement are merely for the convenience of law enforcement personnel. He maintains the software programs mentioned in Appellant's brief cannot give law enforcement the power to penetrate into a person's computer greater than that available to the average user. Respondent's Brief p 2. Respondent cites to no authority for this assertion. Nor does he offer any citation to the record. Apparently this is merely his personal opinion. As such, it is completely inappropriate as argument in a legal brief. Appellate courts will not generally address arguments raised in passing or unsupported by authority. RAP 10.3(a)(4), (6); *State v. Thomas*, 150 Wn.2d 821, 868–69, 83 P.3d 970 (2004). Therefore, this portion of Respondent's argument should be stricken and/or disregarded by the Court.

Later Respondent asserts, "If an average user has the patience, he or she could engage in a search of the public Gnutella network to find all computers possessing and sharing the requested data, in this case, child

pornography.” Respondent’s Brief p 4. Respondent cites no authority for this assertion either. It too should be stricken and/or disregarded by the Court.

Further on in his brief Respondent states, “There is little value in installing P2P file sharing software except for the purpose of making selected files on a personal computer available to anyone who is browsing the Gnutella network . . . This program allowed the public to access any file placed in the computer’s ‘share’ directory.” Respondent’s Brief pp 5-6. Once again, Respondent is testifying to his own personal opinions without citing to either the record or legal authority. This portion of Respondent’s argument should also be stricken and/or disregarded by the Court.

B. CONCLUSION

For the reasons stated herein and in Appellant’s initial brief, the convictions should be reversed and the case dismissed.

Respectfully submitted August 7, 2014,

s/David N. Gasch, WSBA #18270
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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on August 7, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or e-mailed by prior agreement (as indicated), a true and correct copy of the reply brief of appellant:

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