NO. 100624-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KYRAN JOHN LIEN,

Petitioner.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION II
Court of Appeals No. 54146-7-II
Kitsap County Superior Court No. 17-1-01555-3

ANSWER TO PETITION FOR REVIEW

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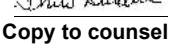
SERVICE	John Henry Browne 506 Second Avenue Suite 1400 Seattle, Wa 98104-1573 Email: johnhenry@jhblawyer.com	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED March 8, 2022, Port Orchard, WA  **Original e-filed at the Supreme Court; Copy to counsel listed at left.** **Office ID #91103 kcpa@co.kitsap.wa.us**

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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Kitsap County Deputy Prosecuting Attorney JOHN L. CROSS.

II. COURT OF APPEALS DECISION

The State respectfully requests that this Court deny review of the Court of Appeals unpublished decision in *State v. Lien*, No. 54146-7-II filed November 23, 2021, a copy of which is attached to the petition for review.

III. COUNTERSTATEMENT OF THE ISSUES

The Court of Appeals, in conformity with well-established principles, held that

> (1) the trial court did not abuse its discretion in denying Lien's motion to dismiss all charges based on outrageous governmental conduct,
>
> (2) the trial court did not err in admitting into evidence Lien's text messages because the Washington Privacy Act (WPA), RCW 9.73.030, is inapplicable to them,
>
> (3) the trial court did not err in admitting the women's underwear and lotion found in Lien's vehicle because they were relevant to the charges,
>
> (4) the trial court did not err in admitting a redacted transcript and audio recording of his interrogation without allowing him to introduce exculpatory portions of the interrogation,
>
> (5) Lien cannot challenge on appeal the WSP officer's testimony that all of Lien's communications were about sex with a 13-year-old because he did not object in the trial court,
>
> (6) we decline to consider Lien's argument that the trial court erred

in not giving an entrapment jury instruction for the communication with a minor for immoral purposes charge because Lien did not object to the failure to give the instruction,

(7) sufficient evidence supported the conviction for communication with a minor for immoral purposes, and

(8) sufficient evidence supported the conviction for tampering with physical evidence.

State v. Lien, Slip. op., no. 54146-7-II at 1-2.

The question presented is whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met, because:

1. The Court of Appeals decision does not conflict with any decision of this Court or any published decision of the Court of Appeals; and

2. The petition fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and

3. The petition fails to present any issue of substantial public interest that should be determined by this Court.

IV. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Kyran John Lien was charged by information filed in Kitsap County Superior Court with attempted second degree rape of a child,

attempted commercial sexual abuse of a minor, and felony (by electronic communication) communication with a minor for immoral purposes. CP 1-4. A second amended information added two counts: an additional count of communication with a minor, the two counts of that offense now broken into separate days, and a count of tampering with physical evidence (gross misdemeanor). CP 288-292. Finally, a third amended information was filed that omitted the second count of communication with a minor. CP 370-374.

Trial proceeded on the four counts. CP 543. Lien was found guilty of communicating with a minor (CP 544) and tampering with physical evidence. CP 544-45.

Lien moved to dismiss all counts, alleging that all counts were the product of outrageous governmental conduct. CP 113. Lien successfully challenged the second count of communication with a minor. CP 294 (motion).

Lien asserted affirmative defenses of abandonment and entrapment. CP 390; 391 (argument for entrapment instruction). The trial court instructed the jury on the entrapment defense on the attempted second degree rape of a child count (CP 527) and the attempted commercial sexual abuse of a minor count. CP 533. The trial court did not instruct the jury on abandonment. 6RP 1015. An entrapment

instruction was not given on the communication with a minor count or the tampering with evidence count. 6RP 1014. The defense agreed with this ruling. 6RP 1014.

Lien also moved to redact and edit portions of the police interview. CP 398. The defense sought to compel the state to supplement its proposed audio evidence of the police interview with video evidence. After the defense agreed to offer evidence from the video in its own case, the trial court ruled in turn on the parts of the video the defense wanted to play. Argument concerning that issue continued throughout the trial and are described in more detail in the argument section.

Lien moved to exclude police testimony about the net nanny operation—reasons it exists and its goals—and prohibit any opinions as to his guilt. The trial court substantially granted these motions but allowed police testimony as to the nature of the operation—the operation's set-up and conduct. 1RP 37.

Later, Lien moved to exclude police testimony that refers to the Missing and Exploited Children Task Force as irrelevant and prejudicial. 2RP 202. The trial court ruled that the name of the task force is not relevant. During his testimony about his law enforcement experience, Washington State Patrol Detective Garden said the words "Missing and Exploited Children." 3RP 454-55. Lien did not object to the remark.

Lien was sentenced to two months in custody. CP 481. Lien was ordered to abide 12 months of community custody on the communication with minor count. Id. Lien was ordered to complete a psychosexual evaluation and comply with treatment recommendations. CP 483.

Lien timely filed a notice of appeal. CP 493.

B. FACTS

The Washington State Patrol organized an undercover operation. 2RP 368-69. Craigslist was used to post an advertisement. 2RP 369-70. The ad was captioned "Young looking for older daddy. W4M" -- in parenthesis – "Bremerton." 2RP 388-89. The body of the ad said:

> I am looking for a daddy, long hair, looking for a guy that knows what he wants and can teach me new things. Let's have some fun. I like showers. Very clean, DDF. Gifts are always nice. If you don't want oh hang out, then go to another ad. My house is best.

2RP 389. "DDF" means disease and drug free. Id. "W4M" woman looking for man. Id.

A WSP detective received an emailed response from a person identified in the response as KYL. 3RP 459. Lien admitted that he responded to the ad by email. 6RP 905.

Detective Garden read from an admitted printout of his online conversation with Lien. 3RP 464 *et seq.* (2d supp. CP 724). The back and forth of the conversation becomes more explicit when the two discuss that

a "condom party," that the detective says he wants, is "sex, silly." 3 RP 471-72.

On the second day, Lien got around to asking about age. 3RP 472. Detective Garden responded: "Did you forget—did you forget, three periods. My friend and I are 13." 3RP 472-73. Lien's response to this is "Your pic is gorgeous." 3RP 473. Lien then exclaims that "I thought your 13 was 18." 3RP 473. The "don'y you remember" part of the contact is reference to a "Snapchat" picture sent by detective Garden that included a message stating that the person pictured was 13 and attractive. CP 567.

Next morning, Lien sent an early email. 3RP 474. Soon Detective Garden sent back "I thought being 13 scared you off." Id. Lien admitted that the age is "scary." Id.

When Detective Garden complained that the bed his persona slept in was cold, the conversation turned to how to warm her up. 3RP 477-48. Lien responded:

> First you have to be wearing something sexy and enticing. You're all snugged in under blankets in your cold room. My strong big hands start to give you a nice deep tissue massage with a nice oil.

3RP 478. Lien went on explaining his intentions for their encounter: a rough message with body oil with hands and mouth. 3RP 478-79. He says

> Yes, the covers are off now. You are heating up, squirming all over the bed. You can't hold still. I hear you moaning and squealing with your head buried in your pillow in anticipation of things. You

> feel me slipping your panties off and gently resist until you give in and raise your hips.

Id. Not done, Lien writes:

> Yes, I'd say you're a good girl. Daddy loves how wet your pussy gets as I lick my fingers tasting your nectar. I turn you into your -- I turn you onto your back to look at you fully now. You're shy at first and then show off your pussy because you know it's absolutely perfect.

3RP 479. There is more about what he will do at 3RP 480.

Lien was directed to a predetermined location. 3RP 491. Police surveillance had been set up there. 3RP 492. Lien was directed to send Detective Garden a self-photo of himself at the 7-Eleven; Lien complied but was at the wrong 7-Eleven. 3RP 494-95. After being told he was at the wrong store, Lien traveled to the correct 7-Eleven and again sent a self-photo. 3RP 495-96.

Lien was given an address and was on his way to meet the putative 13-year old girl. 3RP 483-484. Lien said that he had stopped to get condoms. Id. On the final approach Lien balked worried about too many cars around the address; the situation was sketchy. 3RP 486.

Police surveillance units conducted a traffic stop. 3RP 553-54. Lien admitted that he knew the arrested was for having an inappropriate conversation with a young girl. 3RP 554. Lien admitted knowledge that the person he was communicating with was 13 years old. 3RP 556. Lien admitted that he thought about sex with the girl but decided that something

was not right about the situation and decided against it. Id.

In Lien's truck police found a broken iphone. 4RP 666. Lien admitted dropping the phone and stepping on it because he was "freaked out." CP 709. Lien testified that he snapped his phone because he thought that he might have been talking to a 13-year old. 6RP 965

Interviewed by WSP detective Noyes, Lien admitted that he sent the emails to detective Garden. 5RP 770. Lien admitted that he knew that the person he was communicating with was 13 years old. 5RP 771. In testimony, Lien admitted that he had received the photograph from Detective Gardner saying that Gardner's persona was 13. 5RP 950. In interview with Detective Noyes, Lien admitted that he knew that communicating with a 13-year old for sex would get him trouble. CP 713.

V. ARGUMENT

1. None of the considerations governing acceptance of review set forth in RAP 13.4(b) support acceptance of review.

The Court of Appeals decision is not in conflict a decision of the Supreme Court or a published decision of the Court of Appeals; RAP 13.4(b)(1) and (2) do not support review. The petition fails to raise a "significant question" of constitutional law and presents no issue of "substantial public interest;" RAP 13.4(b)(3) and (4) do not support review.

2. The Court of Appeals applied the correct standard of review in affirming the trial court's denial of Lien's motion to dismiss for outrageous governmental conduct.

The Court of Appeals implied that the trial court erred in applying a light most favorable to the state evidentiary standard in deciding Lien's motion, finding "no authority" for that approach. *Slip. op.* at 9. But Lien assails the standard of review in the Court of Appeals, not the trial court's evidentiary standard mistake. Lien then wants the matter remanded for findings "*under the correct standard of review."* Petition at 10. Moreover, Lien, without authority, argues that the trial court was required to enter written findings of fact and conclusions of law in deciding the issue.

The standard of review on a claim of outrageous governmental conduct is abuse of discretion. *Slip. op.* at 9. The court below cited *State v. Lively,* 130 Wn.2d 1, 21-22, 921 P.2d 1035 (1996), establishing that review of the outrageous conduct issue is "based on the totality of the circumstances, addressing the unique set of facts in each case." *Slip. op.* at 9 (*citing Lively,* 130 Wn2d at 21). Lien does not explain why these standards of review are in error or how they conflict with Supreme Court authority.

As for the trial court, the court below noted that the facts Lien relied on for the motion—the WSP ad and subsequent recorded communications--were not in dispute and thus the light-most-favorable-to-the-state remark did not warrant reversal. Id. at 12. The Court concluded that it was unclear what evidentiary standard the trial court applied. Id. Lien provides no argument explaining what he believes the correct evidentiary standard in the trial court is or should be.

The Court was critical of the trial court for not expressly addressing the *Lively* factors and by that omission "making our review more difficult." *Slip. op*. at 12-13. But there is no rule or holding making written findings mandatory for such motions. In fact, the *Lively* Court said in consideration of all the circumstances that

it is important to observe that we do not rest our conclusion

> regarding outrageous conduct on the trial court's findings, but simply find them relevant to one of the factors considered in determining whether police conduct offends due process.

Lively, 130 Wn.2d at 25.

The Court of Appeals observed regarding *State v. Valentine*, 132 Wn.2d 1, 935 P.3d 1294 (1997), that appellate courts in fact strongly advised that findings "should" be entered, but no holding says they must be. Id. There was, for example, no error in *State v. Solomon,* 3 Wn.App.2d 895, 419 P.3d 438 (2018), where the Court relied on the trial court's oral findings. *Slip. op*. at 12. In *Lively,* the outrageous conduct issue was raised for the first time on appeal. Id. at 13 (*citing Lively,* 130 Wn.2d at 18-19). There simply were no written findings and conclusions for the *Lively* Court to consider. The Court of Appeals treatment of this issue does not conflict with any other authority.

3. The Court of Appeals properly applied this Court's due process test in consideration of the trial court record on review of the denial of Lien's outrageous conduct motion.

Lien contends that the court below engaged an incorrect "post hoc" approach to the *Lively* factors. It is true that the reviewing court's analysis of the factors occurred after the trial court's ruling on the matter.[1] The Court of Appeals correctly reviewed the totality of the circumstances as found in the trial court record and held that the trial court did not abuse its discretion in denying the extraordinary remedy of dismissal.

1. Instigation

The Court did not "rely on *Glant."*[2] Motion at 15. The Court found the *Glant* trial court's treatment of the question to be "similar." Police posted the ad. Because Lien voluntarily replied to the ad, the Court properly found that the ad did not target Lien. These competing facts, without the additional police aggression found in *State v. Solomon,* 3 Wn. App.2d 895, 419 P.3d 436 (2018), result in correct finding that the factor is neutral.

2. Police Persistence

Lien simply disagrees with the Court's analysis of the facts. Lien ignores that he expressed the girth of his penis early in the communication. As in *Glant,* Lien's response to the ad and a lack of hesitation in discussing sexual matters causes this factor to militate in favor of the state. The Court's analysis of the facts relevant to this factor is completely reasonable and rebuts the present argument. This factor was correctly considered to weigh against dismissal.

3. Control of Criminal Activity

Here, as he does in the entrapment issue, Lien argues that the Court is in error because it did not follow the pronouncements of a superior court

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[1] Post hoc means "after this." Black's Law Dictionary, 5th Ed., West Pub., 1979.

judge, who was not the trial judge, and who was not ruling on a motion to dismiss the prosecution for outrageous governmental conduct. And, who, of course, did not back his statement with written findings of fact as Lien asserts is required if such remarks are to be considered.

Lien simply does not rebut the finding that he was an equal participant in the exchanges. It is a neutral factor.

4. WSP Motives and Repugnance to Sense of Justice.

Lien concedes the strong policy interest that weighs against dismissal on law enforcement motives. Lien fails to rebut the vitality of that same policy in consideration the repugnance factor. Here, again, Lien merely advances a different take on the facts. He does not rebut the strong policy that allows undercover police to talk about sex in order to capture sex offenders.

The Court properly followed *Glant* on the public policy issue and on the issue of private funding. The Court's reading of the record is correct and reasonable on this issue. This factor does not support dismissal and need not be reviewed.

Finally, Lien does not address the Court's correct holding that "based on an analysis of *Lively* factors and the totality of the

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[2] *State v. Glant,* 13 Wn. App.2d 356, 465 P.3d 382 (2020).

circumstances, this case does not involve egregious circumstances." *Slip. Op.* at 16 (emphasis added). The Court is correct on the law and the facts. Review should be denied.

4. The Court of Appeals correctly found that Lien's argument is inadequate to support a finding that the trial court abused its discretion, was inadequate to establish that all statements were admissible under ER 106, and was inadequate to support admission the resulting inadmissible hearsay.

Here, Lien claims impairment of the right to present a defense. Alternatively, Lien argues that the statements he sought to admit below are admissible under ER 106.

The Court of Appeals applied the proper standard of review to the trial court's evidentiary rulings under ER 106, abuse of discretion. *Slip. op.* at 19. Lien never contests that

> both parties and the trial court went through an exhaustive line-by-line examination of the transcript of Lien's interrogation, discussing which portions that Lien sought to admit should be included in the transcript provided to the jury and which should not.

Id. at 20. Lien has no answer for the finding of the Court of Appeals that "This undertaking involved the court's exercise of its discretion, and Lien has not explained with specificity how the trial court abused that discretion." Id. Further, the paucity of argument extends to Lien's

assertion of blanket admissibility under ER 106: "Lien does not explain how *every* statement he made in the interrogation meets the rather stringent requirements of ER 106." Id. (emphasis by the court).

Lien's right to present a defense argument fails along with his ER 106 argument. That is, the court below correctly found that "if Lien's exculpatory statements in the interrogation were not admissible under ER 106, they were inadmissible hearsay." *Slip. op.* at 20 (*citing State v. Finch*, 137 Wn.2d 792, 824, 975 P.2d 967 (1999)).

The court below broke no new ground in noting that the right to present a defense is "subject to 'established rules of procedure and evidence.'" *Slip. op.* at 19 (*quoting State v. Lizarraga*, 191 Wn. App. 530, 553, 364 P.3d 810 (2015) (which case quoted *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973))). The Court followed this Court's prescription of a two-step process—first applying abuse of discretion to the evidentiary ruling and then considering those rulings de novo in light of the right. Id. at 19-20. The Court of Appeals properly balanced the parties' interests and found that Lien's interest in admitting the evidence "did not outweigh the State's interest in excluding inadmissible evidence." Id.

The court below followed this Court's authority on the issue. There is no conflict in the standards used or how they were applied. This

issue should not be reviewed.

5. Lien sought the police officer's opinion on cross examination and did not object when he got it.

During cross examination, Lien spent considerable effort attempting to have the detective say that he, the detective, had been first to mention sex in his communication with Lien. See e.g. 3RP 521-23. Lien's counsel asked "And this is kind of where the communications get a bit x-rated; is that true?" The detective responded "I feel like they're x-rated all the way through, but this is x-rated at this part. I think it's all about sex with a 13 year old prior to this. So to me it's all -- it's not just at this point." 3RP 523. Lien did not object.

The failure to object left the issue unpreserved. Appellate courts do not consider evidentiary issues raised for the first time on appeal "because failure to object deprives the trial court of the opportunity to prevent or cure any error." *State v. Curtiss*, 161 Wn. App. 673, 696, 250 P.3d 496 (2011) *review denied* 172 Wn.2d 1012 (2011). Moreover, "The admission of a witness's opinion testimony on an ultimate fact, without objection, is not automatically reviewable as a manifest constitutional error." *Curtiss,* 161 Wn. App. 696-97 *citing State v. Kirkman,* 159 Wn.2d 918, 936, 155 P.3d 125 (2007). To raise an unpreserved improper opinion claim, an appellant "is required to show that the error is manifest and actually prejudiced the jury." *Curtiss*, 161 Wn. App. at 697. Lien did not

preserve error on receipt of the opinion he so strenuously sought. This issue should not be reviewed.

Moreover, even if Lien's in limine motions might be stretched far enough to cover this testimony, the Court of Appeals followed well-established authority that he must still object. In *State v. Sullivan*, 69 Wn. App. 167, 847 P.2d 953 (1993) *review denied* 122 Wn.2d 1002 (1993), the rule was stated

> A review of the authorities discloses that the allowance of a standing objection to the introduction of evidence, thus preserving the issue for appeal, has been allowed only to the party losing the motion to exclude the evidence.

Id. at 171 (collecting cases). Since Lien was the prevailing party on the motion in limine, he had a duty to object to the violation of the order. This because "The trial court has no duty to remedy a violation *sua sponte*." *Sullivan*, 69 Wn. App. at 172. This rule applies unless avoiding prejudicial impact is impossible:

> even when the trial court has already excluded evidence through a pretrial order, the complaining party should object to the admission of the allegedly inadmissible evidence in order to preserve the issue for review, unless an unusual circumstance exists that makes it impossible to avoid the prejudicial impact of evidence that had previously been ruled inadmissible.

State v. Weber, 159 Wn.2d 252, 272, 140 P.3d 646 (2006) *citing Sullivan, supra.* The rule has particular clarity where a party seeks the evidence on cross examination that she previously sought to exclude.

The Court of Appeals properly applied existing precedent to this issue. There is no conflict with this Court's cases and review should be denied.

6. Lien did not preserve the issue of the trial court's refusal to instruct the jury on entrapment as to count II.

Lien claims that he preserved the entrapment instruction issue because the trial court rejected his proposed instruction. Pet. at 25. Lien further claims that he need not have preserved the issue by objection because it is a manifest constitutional issue under Rap 2.5(a)(3). Id. And, finally, Lien argues that review is required because he is right on the merits. Pet. at 27-28.

The conclusion of the Court of Appeals is driven by the facts admitted by Lien. *Slip op.* at 22. Jury instructions were considered and the trial court ruled "Entrapment applies to Count I and II only." 6RP 1014-15. Counsel responded "That is correct. We agree with that." Id. Further, counsel conceded that "that is our proposed instructions." Id.

The Court of Appeals observed that

> following that comment Lien never objected to the trial court's failure to give an entrapment instruction for the communication with a minor for immoral purposes charge. The trial court had no notice that Lien did not agree with the court's decision not to give the instruction.

Id. The proper standard of review is abuse of discretion when a refusal to instruct is based on lack of factual support. *See State v. Lucky*, 128 Wn.2d 727, 731, 912 P.2d 483 (1996) *overruled on other grounds by State v. Berlin*, 133 Wn.2d 541, 544, 947 P.2d 700 (1997). Here, Lien, at the time, articulated that the trial court's finding of lack of factual support was "correct."

Lien now claims that counsel was mistaken in his agreement with the trial court's ruling.[3] The basic principles of issue preservation should prevail: one should not be allowed to so whole-heartedly agree with the trial court on the record and then claim error on appeal. The issue was not preserved.

Moreover, as the Court of Appeals noted, the state argued below that Lien's position here is a paradigm of invited error. *See City of Seattle v. Patu*, 147 Wn.2d 717, 720, 58 P.3d 273 (2002*); see also State v. Schierman,* 192 Wn.2d 577, 618, 438 P.3d 1063 (2018) ("the invited error doctrine prohibits a party from appealing on the basis of an error that he or she "set up" at trial."). This Court recently said, "even where constitutional rights are involved, we are precluded from reviewing jury instructions when the defendant has proposed an instruction or agreed to

[3] Lien emphasizes counsel's remark that the trial court's ruling agrees with the defense proposed instructions. The defense submitted a proposed entrapment instruction as to count III (Sup. CP at 500).

its wording." *State v. Weaver,* 198 Wn.2d 459, 465, 496 P.3d 1183 (2021) (doctrine does not apply where party did not submit the challenged instruction).

Lien did not advance a RAP 2.5(a) argument in the Court of Appeals. This Court cannot review a decision that the Court of Appeals was not asked to make. Further, review under this exception must involve a constitutional error that is "manifest"—"there must be a showing of actual prejudice, which requires a plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case." *State v. Gouley,* 19 Wn. App.2d 185, 197-98, 494 P.3d 458 (2021) (page break, internal quotation omitted) *citing State v. O'Hara,* 167 Wn.2d 91, 99, 217 P.3d 756 (2009).

The *O'Hara* Court held that the error must be practical and identifiable. 167 Wn.2d at 99. And,

> to determine whether an error is practical and identifiable, the appellate court must place itself in the shoes of the trial court to ascertain whether, given what the trial court knew at that time, the court could have corrected the error.

167 Wn.2d at 100. In *O'Hara,* under all the circumstances of that case, the giving of a misworded self-defense instruction was not a practical and identifiable error and thus did not meet the preservation exception of RAP 2.5(a)(3). 167 Wn.2d at 109.

Here, counsel's agreement with the trial court ruling controls. The complete agreement of the defense is "what the trial court knew at the

time." Given that agreement, the trial court could not have corrected the alleged error. Under all the circumstances, Lien fails to establish constitutional error that is practical and identifiable. The issue was not preserved in the trial court and the exception in RAP 2.5(a)(3) does not apply. This issue should not be reviewed.

7. The jury's finding of guilt on the communication with a minor charge is supported by sufficient evidence.

Lien claims error below because there was insufficient proof that he intended to "sexualize" the 13-year-old with whom he had been told he was communicating.

The Court of Appeals correctly failed to find that intent to sexualize is an element of the offense. *Slip op.* at 24. The court noted that RCW 9A.68.090 makes unlawful communication with a minor for immoral purposes if the person communicates with someone the person believes to be a minor for immoral purposes and elevates the crime to a felony if the communication is by electronic means. *See also* WPIC 47.06 (used with appropriate modification in the case, CP 536, and does not contain intent to sexualize); *State v. Aljutily*, 149 Wn. App. 286, 297, 202 P.3d 1004 (2009) *review denied* 166 Wn.2d 1026 (2009)(statute constitutional because "The statute applies only if one intends that an immoral communication reach a minor and it actually does reach a minor

or someone he or she believes to be a minor.").

The Court of Appeals considered Lien's admission to police that he had been told that the person with whom he was communicating was 13. The record reflects that after being told this Lien sent out statements like "Daddy loves how wet your pussy gets as I lick my fingers tasting your nectar." 3RP 479.

The Court correctly viewed the evidence in a light most favorable to the state. Any rationale jury could find intent to communicate with a minor for immoral purposes of a sexual nature. This issue should not be reviewed.

VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Lien's petition for review.

VII. CERTIFICATION

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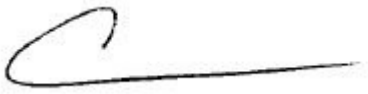
DATED March 8, 2022.

Respectfully submitted,

CHAD M. ENRIGHT
Prosecuting Attorney



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