

FILED
Court of Appeals
Division I
State of Washington
6/19/2019 12:00 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
6/21/2019
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. 97355-5

NO. 77587-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH DINO BUFFALINO,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Julie Spector, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Joseph Dino Buffalino, the appellant below, seeks review of the appended Court of Appeals decision in State v. Buffalino, noted at ___ Wn. App. 2d ___, 2019 WL 1785612, No. 77587-1-I (Apr. 22, 2019) (Appendix A), following denial of his motion for reconsideration on May 20, 2019 (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

1. Is review appropriate under RAP 13.4(b)(3) when RCW 9A.88.060's definition of "advances prostitution" is insufficiently precise to provide reasonable notice of what conduct is illegal, violating due process?

2. Is review appropriate under RAP 13.4(b)(4) when RCW 9A.88.060's definition of "advances prostitution" is insufficiently precise to provide reasonable notice of what conduct is illegal, presenting an issue of substantial public interest?

C. STATEMENT OF THE CASE

The state charged Buffalino with one count of promoting prostitution in the first degree, felony harassment, intimidating a witness, and three counts of misdemeanor violation of a court order. CP 13-16. All charges included domestic violence allegations. CP 13-16.

The promoting charge arose from allegations that Buffalino compelled Traci Abern to engage in prostitution by threat or force between January 1, 2016 and February 10, 2017. CP 13-14. The state alleged that Abern worked as a prostitute on Aurora Avenue in Seattle, Washington, that she was compelled to follow Buffalino's rules as they related to prostitution or be subjected to physical punishment, and that Buffalino used fear of that punishment to intimidate and control Abern in order to profit from her prostitution. 2RP 2-4.

In support of these charges, the state presented numerous law enforcement officers, an employee from America's Best Value Inn, and Traci Abern. Detective Andrew Schwab testified that on May 12, 2016, he came into contact with Buffalino and Abern while working as an undercover officer on Aurora Avenue. 2RP 23-24. He testified he saw Abern walking southbound on Aurora with Buffalino walking in the same direction about twenty feet behind her. 2RP 24-26. Losing sight of Abern, Detective Schwab waited at a bus stop in the 9900 block of Aurora Avenue and "continued to watch." 2RP 28. Buffalino approached the bus stop and Detective Schwab initiated a conversation with him, telling Buffalino how attractive Abern was. 2RP 29. Detective Schwab testified that Buffalino told him that Abern was "available" and that she was his wife of two years. 2RP 29-30. Detective

Schwab testified that he apologized to Buffalino for his language, and that Buffalino responded: "It's our thing, that's what we do." 2RP 30.

Detective Schwab attempted to arrange a date with Abern through Buffalino and Buffalino declined, telling him that that was between him and Abern. 2RP 30. Shortly thereafter, Abern returned, Buffalino and Abern moved away from the bus stop and had a conversation, and Buffalino made a "hand gesture." 2RP 31. Abern approached Detective Schwab. 2RP 31. Detective Schwab asked her if she had time for a "quick." 2RP 32. Abern asked Buffalino if she had "time for a quick" and he responded "No, we've got to go." Detective Schwab testified that he asked, "Hey, can we hook up later?" 2RP 33. Buffalino agreed, Detective Schwab asked for his phone number, Buffalino declined to give it to him, Detective Schwab gave Buffalino his number, and neither Buffalino nor Abern ever called Detective Schwab. 2RP 33, 41. Detective Schwab testified that he had contact with Abern again in September of 2017 and that Abern told him that she was not working for Buffalino. 2RP 34-35, 41.

Detective Maurice Washington and Detective Sydney Brathwaite testified that they met with Abern while she was in custody in King County Jail on February 8, 2017 after Abern reported that Buffalino was contacting her in violation of a no-contact order. 1RP 60, 129. Detective Washington testified that Abern described being assaulted by Buffalino and was shaking

and appeared fearful, was stuttering, at times was whispering as if someone was listening to her, and at other times was laughing or chuckling. IRP 64. Abern's attorney provided the detectives with letters that Buffalino wrote to Abern while she was in custody in violation of a no-contact order. IRP 65. Through Detective Brathwaite's testimony, the state introduced Buffalino's statement on plea of guilty from a November 9, 2016 incident to which Buffalino pleaded guilty to assault in the third degree against Abern. IRP 137. Pursuant to the plea, Buffalino was to have no contact with Abern for five years from December 16, 2016. IRP 141.

Detective Steven Lysaght testified regarding his involvement with that November 2016 incident. He responded to America's Best Value Inn after a reported assault and he took Abern's statement. IRP 72, 74. He took photographs of red marks on Abern's face and neck and bruising on her neck and torso. IRP 77.

Detective Joshua Gedney testified that on November 10, 2016, Detective Lysaght told him he would be dropping Abern off on Aurora Avenue and asked him to look for Buffalino to show up. IRP 91-92, 96. Detective Gedney saw Buffalino around 10 minutes afterward and, because there was probable cause to arrest him in connection with the alleged assault, he arrested Buffalino. IRP 94, 98. Detective Gedney recovered \$68 after searching Buffalino incident to arrest and was told that Buffalino took \$60

from Abern. 1RP 95. Buffalino was adamant that the money be given to Abern. 1RP 100.

Deputy Laura Alspach testified that she took photographs of Abern's neck, chest, and ripped bra on November 9, 2016. 1RP 103. She also assisted in arresting Buffalino on that date. 1RP 106.

Karla Marroquin, an employee at America's Best Value Inn in Shoreline, testified that while working at the hotel on November 10, 2016 she heard screaming and hitting coming from one of the rooms. 1RP 114. She knocked on the door of the room and Buffalino answered. 1RP 116. She told Buffalino she wanted to check on the female in the room and Buffalino told her that the female was taking a shower. 1RP 116. Abern exited the room and did not appear to have taken a shower. 1RP 116. Marroquin observed injuries on Abern's neck and thought she looked upset. 1RP 117. Marroquin asked a coworker to call the police and left Abern in the hotel lobby. 1RP 119.

Traci Abern also testified. 1RP 197-285. She stated Buffalino was her boyfriend of two years and that their relationship was a happy one at times. 1RP 198. She also testified that they fought and that the fighting increased with their drug use. 1RP 199. When Buffalino used too much, Abern testified, their fights became physical. 1RP 199. They also argued about Abern's prostitution and heroin use and Buffalino tried to get her to

stop working as a prostitute and into a drug treatment program. 1RP 259-60, 266. Sometimes, Buffalino would give her money to try to deter her from working. 1RP 267. Abern was not deterred. 1RP 267. Abern testified that she likes “rough sex” involving being slapped “or worse.” 1RP 269.

Abern testified that she had been working as a prostitute for seven or eight years and had only known Buffalino for two years. 1RP 201. She described her situation as “brutal” and said if not for Buffalino, she doubted she would be alive. 1RP 202. She alluded to being kidnapped and left for dead, and testified that Buffalino would find her, or pull her out of a car if someone was hurting her. 1RP 202-03. Abern downloaded a tracking application on her phone and on Buffalino’s phone so that if she pulled her headphones out, an “SOS” would be sent to Buffalino. 1RP 203-04. Abern testified that she works as a prostitute to fund her heroin addiction. 1RP 202. Abern testified that Buffalino would sell drugs on Aurora Avenue while she worked. 1RP 231. Abern testified that Buffalino did not approve of her working as a prostitute. 1RP 203.

According to Abern, Abern would save the money she earned on a debit card and Buffalino kept the card because he was better at saving than she was. 1RP 204-05. Buffalino also earned money by selling drugs, and the money they put together belonged to both of them. 1RP 249, 262. Abern testified that they considered themselves married. 1RP 263.

Abern testified that there were “rules” that she followed for her safety when working as a prostitute, like not getting in a car that has tinted windows. 1RP 216-17. She said that she did not have to follow rules but that she chose to do so for her safety. 1RP 216. She had been following some rules, like getting paid up front, for nine years. 1RP 217. One rule imposed a time limit on meetings with men. 1RP 252. If someone went over that limit and was hurting Abern, sometimes Buffalino would assault the person. 1RP 252. In a statement to police, Abern claimed that Buffalino assaulted her almost daily and that he was her pimp. 1RP 218, 275. She told detectives that one customer paid Buffalino directly one time. 1RP 254. Abern testified that when she gave this statement, she was angry at Buffalino and concerned that he would leave her. 1RP 275.

Abern testified that she was not working for Buffalino and that after she and Buffalino fought, she started working for someone else who kept her in a “comatose state.” 1RP 237. She would run away from Buffalino when she wanted to use drugs. 1RP 261. When Abern ran away, Buffalino would find her. 1RP 238. Abern recounted this with a smile, because she wanted to be found. 1RP 238.

Regarding the November 2016 incident, Abern testified that she had earned \$60 that day while Buffalino was at their hotel. 1RP 207, 268. Upon her return they argued about Abern’s heroin use and being short on rent and

Buffalino took the money from her. 1RP 207-08; 227. Abern testified that Buffalino was high on meth and strangled her. 1RP 227-28. She testified that the incident began with consensual contact but that Buffalino got carried away and ended up hurting her. 1RP 246.

Abern testified that she was in custody in December 2016 and called Buffalino from King County Jail multiple times. 1RP 209. After listening to recordings of the calls, Abern identified the female voice as her own and the male voice as Buffalino's. 1RP 210-11. On one call, Buffalino told Abern that he had "a list of motherfuckers who are in trouble," that Buffalino would "retaliate against any unjust move toward" him, and there was some discussion about Abern having sex "for free." 1RP 219-21. When asked what that was about, Abern answered that she cheated on Buffalino for free and that he was upset. 1RP 219-21, 226. On the call, Abern indicated that she was afraid. 1RP 221. She testified that she was scared that Buffalino would leave her. 1RP 255. There was a list of people that Buffalino told Abern he was going to "take care of" and whom Abern said she would help him find. 1RP 225. These people included Andrew Stewart and Dennis Gorbanav, ex-boyfriends of Abern's. 1RP 240. Abern testified that she was afraid for their safety and connected Buffalino's threats to Dennis and "Drew." 1RP 239; 274. She testified that Buffalino did not threaten her during the phone calls. 1RP 276.

On one call, Abern said that she would accept punishment from Buffalino. 1RP 225-26. Abern recalled being punished for “messing up,” and testified that she “liked it sometimes. . . . I kind of got in trouble just to get punished.” 1RP 245. She recalled provoking Buffalino in order to be assaulted because it was her “thing.” 1RP 246.

Abern identified multiple letters as letters Buffalino mailed to her in King County Jail. 1RP 214-16. In one letter, Buffalino told Abern that she “get[s] a pass because I know in my heart you are my wife but other people don’t. I want to split that old bitch’s head open real good . . .” 1RP 243. In another letter, Buffalino told Abern “[Y]ou fuck around with your Russian . . . wild bitch mother fuck. That’s why you got jumped on and I will knock that stupid look on the left side of his face over to the right side.” 1RP 243-44.

Buffalino testified that his relationship with Abern was “great” in the beginning when drugs were not involved. 1RP 292. He denied giving Abern rules to follow and said, rather, there were rules of the street that had to be followed for survival. 1RP 294-95. He admitted that Abern asked him to keep money that she wanted to save on a card because if she had it she would buy drugs, but testified that he would give the card to her if she asked. 1RP 304-05. He and Abern acted as if they were married. 1RP 306. Buffalino denied ever taking money from Abern’s customers and denied

assaulting her on a daily basis. 1RP 306. He did admit that he would physically attempt to stop her from going somewhere and echoed that Abern was “into rough sex.” 1RP 306.

Regarding the November 2016 assault, Buffalino testified that he did too much dope. 1RP 306. He fell asleep and at some point after he woke up, Abern returned to the room and they had sex. 1RP 306. Money fell out of her bra when it ripped. 1RP 307. Buffalino admitted he grew angry because he thought Abern was hiding money that should go to paying rent so that she could buy drugs. 1RP 307. The fight “got loud” and a hotel employee interrupted. 1RP 307. Buffalino left. 1RP 307. He admitted he pled guilty to assault. 1RP 309.

After he was released from custody, Buffalino heard that Abern had been cheating on him with Drew and Dennis and using heavily while he was in custody. 1RP 309-10. Buffalino was angry and jealous. 1RP 312. He testified that he accepted calls from Abern in violation of the existing court order. 1RP 313. When asked what he meant when he accused Abern of “giving it away for free,” he explained that he was upset that she was cheating on him: “If it is work, that’s work. That is something that I accepted about her when I fell in love. . . .[B]ut if it is free, then she is screwing around.” 1RP 316. When asked why Abern would talk about working for Buffalino as a “you know what,” Buffalino responded that he did not know.

1RP 344-45. When asked about what Abern referred to as a “probation period,” Buffalino said she was referring to giving their relationship a month. 1RP 344.

The prosecutor argued in closing that Abern was physically abused because she was not following Buffalino’s rules and that the abuse compelled Abern to participate in prostitution. 1RP 393-94. In arguing that Buffalino knowingly advanced and profited from Abern’s prostitution, he argued that Buffalino “simply being there and ready to assist her to provide protection” aided the act of prostitution. 1RP 395. The state also argued that Buffalino profited from the money Abern made while working as a prostitute. 1RP 395.

The jury found Buffalino not guilty of promoting prostitution in the first degree and not guilty of intimidating a witness, but returned guilty verdicts on the lesser crime of promoting prostitution in the second degree (with domestic violence aggravator), count II (felony harassment with domestic violence aggravator), and counts IV, V, and VI (misdemeanor violations of a no-contact order – domestic violence). CP 67-73, 76.

On count I, the court imposed an exceptional sentence of 60 months of confinement. CP 92. On count II, the court imposed 57 months of confinement concurrent to count I. 1RP 490. The court imposed but

suspended 364 days on counts IV, V, and VI to run concurrent with each other and consecutive to counts I and II. CP 98.

Buffalino appealed and argued that RCW 9A.88.060's definition of "advances prostitution" is unconstitutionally vague. Br. of Appellant at 12-20; Reply Br. of Appellant at 3-7. Specifically, Buffalino argued that the portion of the definition that prohibits an individual from "caus[ing] or "aid[ing] a person to commit or engage in prostitution" was insufficiently precise to provide reasonable notice of what conduct is illegal, the definition allowed excessive discretion to law enforcement in deciding who to stop or arrest, and that the definition runs contrary to legislative intent. Br. of Appellant at 12-20.

By not specifying that any aid needs to be given *with the intent* to cause or aid a person to engage in prostitution in order to be criminal, Buffalino argued, the definition prohibits innocent and even constitutionally protected behavior and does not provide ascertainable standards for locating the line between innocent and unlawful behavior. Br. of Appellant at 13-16. And a broad interpretation of the problematic language renders unlawful any act of assistance, kindness, protection, or even indifference directed toward a person engaged in the enterprise of prostitution whenever the act has the result of aiding that person in committing or engaging in prostitution. Br. of Appellant at 17-18. It subjects those close to individuals engaged in

prostitution to arbitrary and discriminatory law enforcement practices and arbitrarily isolates those engaged in sex work. Br. of Appellant at 18. Buffalino also argued that the broad definition of advancing prostitution runs contrary to “victim-centered” legislative intent by rendering unlawful any aid that aids or causes another to engage in prostitution and that his argument was not precluded by State v. Cann¹, which dealt with a different provision of the same definition of advancing prostitution. Br. of Appellant at 18-20.

The Court of Appeals held that because “RCW 9A.88.060 does not implicate First Amendment issues and because Buffalino fails to argue .060 is unconstitutional as applied to his conduct, his appeal fails.” Appendix A at 5. By reading into the language of the definition a mens rea, the court concluded that the definition of advancing prostitution did not implicate First Amendment issues; that is, the court found that the language of the definition only encompassed behavior *directed toward* persuading another to engage in prostitution. Appendix A at 3-4. Using language from Cann, the court noted that “[s]peech directed toward the persuasion of another to enter into an illegal arrangement does not enjoy constitutional protection’ and ‘[t]hat is the only kind of speech punished under this statute.” Appendix A at 4.

¹ 92 Wn.2d 193, 595 P.2d 912 (1979).

D. ARGUMENT IN SUPPORT OF REVIEW

1. WHETHER RCW 9A.88.060'S DEFINITION OF "ADVANCES PROSTITUTION" IS UNCONSTITUTIONALLY VAGUE IS A SIGNIFICANT CONSTITUTIONAL QUESTION

The void-for-vagueness doctrine implicates due process principles. Nunez v. City of San Diego, 114 F.3d 935, 940 (9th Cir. 1997). "The first essential of due process is violated where citizens, law enforcement officers, or the finder of guilt (be it jury or judge) must speculate as to standards of guilt because of the vagueness of the . . . statute." City of Seattle v. Pullman, 82 Wn.2d 794, 798, 514 P.2d 1059 (1973). To avoid unconstitutional vagueness, an ordinance must define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and establish standards to permit police to enforce the law in a non-arbitrary, non-discriminatory manner. Id.; City of Spokane v. Neff, 152 Wn.2d 85, 88-89, 93 P.3d 158 (2004); City of Sumner v. Walsh, 148 Wn.2d 490, 499, 61 P.3d 1111 (2003).

While the Court of Appeals accuses Buffalino of "ignor[ing] the express language of the challenged clause" which it finds does not prohibit general aid to a prostitute, the portion of the definition at issue does not in fact provide that the action which actually aids or causes another to engage in prostitution must be done for with the purpose of achieving that result.

Appendix A at 3-4; Mot. for Reconsideration at 2. The express language prohibiting causing or aiding a person to engage in prostitution encompasses actions that are not taken for the purpose of furthering prostitution, or that are not designed to aid or cause prostitution (such as providing food or shelter to an individual engaged in sex work, which may actually aid or cause that individual to engage in sex work, without any specific intent to further the admittedly criminal enterprise of prostitution).

In encompassing such conduct, the challenged portion of the definition is overbroad. The express language of the challenged clause stands in stark contrast to the express language of the complicity statute, for example, which prohibits not simply aiding another person to commit a crime, but rather prohibits aiding another to commit a crime *with knowledge that it will promote or facilitate the commission of a crime.*” RCW 9A.08.010(3)(a)(ii) (emphasis added); Mot. for Reconsideration at 2-3. The language of the complicity statute clearly proscribes only aid given with knowledge that it will promote or facilitate a crime because it expressly says so.

Similar language prohibiting only causing or aiding a person to commit or engage in prostitution without also requiring that the action be made with knowledge or design to promote or facilitate prostitution is insufficiently precise to provide reasonable notice of what conduct is illegal

and allows excessive discretion to police, and is therefore unconstitutionally vague. This due process violation presents a significant constitutional question of law and this court should grant review pursuant to RAP 13.4(b)(3).

2. THE QUESTION OF WHETHER RCW 9A.88.060'S DEFINITION OF "ADVANCES PROSTITUTION" IS UNCONSTITUTIONALLY VAGUE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST

Language prohibiting only causing or aiding a person to commit or engage in prostitution without also requiring that the action be made with knowledge or design to promote or facilitate prostitution is insufficiently precise to provide reasonable notice of what conduct is illegal and allows excessive discretion to police, and is therefore unconstitutionally vague. This due process violation presents an issue of substantial public interest and this court should grant review pursuant to RAP 13.4(b)(4).

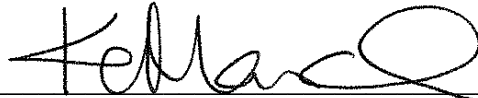
E. CONCLUSION

RCW 9A.88.060's definition of "advances prostitution" is unconstitutionally vague, presenting a significant constitutional question and an issue of substantial public interest. Buffalino asks this court to grant review and reverse the Court of Appeals.

DATED this 19th day of June, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 77587-1-I
)	
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
JOSEPH DINO BUFFALINO,)	
)	FILED: April 22, 2019
Appellant.)	
_____)	

VERELLEN, J. — Because RCW 9A.88.060 does not implicate free speech and because Joseph Buffalino fails to argue .060 is unconstitutional as applied to his conduct, his appeal fails.

Therefore, we affirm.

FACTS

The State charged Buffalino with several charges, including one count of first degree promoting prostitution. The jury found Buffalino guilty of second degree promoting prostitution, the lesser included of first degree promoting prostitution.¹

¹ Buffalino appeals only his conviction of second degree promoting prostitution.

ANALYSIS

Buffalino contends his conviction for second degree promoting prostitution should be reversed because RCW 9A.88.060(1), defining “advancing prostitution,” is unconstitutionally vague.

Under the Fourteenth Amendment to the United States Constitution and article 1 of the Washington Constitution, the due process vagueness doctrine requires statutes “provide citizens with fair warning of what conduct they must avoid” and “protect them from arbitrary, ad hoc, or discriminatory law enforcement.”² “[A] statute is void for vagueness if either: (1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed; or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement.”³ The party challenging a statute has the burden of proving it is unconstitutionally vague.⁴

“A person is guilty of promoting prostitution in the second degree if he or she knowingly . . . [*a*]dvances prostitution.”⁵ Under RCW 9A.88.060(1),

A person “advances prostitution” if, acting other than as a prostitute or as a customer thereof, he or she causes or *aids a person to commit or engage in prostitution*, procures or solicits customers for prostitution, provides persons or premises for

² State v. Halstien, 122 Wn.2d 109, 116-17, 857 P.2d 270 (1993)

³ Id. at 117 (internal quotation marks omitted) (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

⁴ Id. at 118.

⁵ RCW 9A.88.080 (emphasis added).

prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.^[6]

When a challenged statute does not involve First Amendment interests, an appellant may challenge the statute only as it applies to their own conduct.⁷ As a threshold matter, the State argues Buffalino cannot make a facial challenge to .060 because the statute does not implicate the First Amendment.

Buffalino argues .060 implicates protected speech. But in State v. Cann, the appellant challenged the last clause of RCW 9A.88.060(1) as unconstitutionally vague because “it could be construed to forbid innocent conduct which might incidentally advance prostitution.”⁸ Our Supreme Court acknowledged “[s]peech directed toward the persuasion of another to enter into an illegal arrangement does not enjoy constitutional protection” under the First Amendment.⁹ And the court determined “[t]hat is the only kind of speech punished under this statute.”¹⁰

In his reply brief, Buffalino argues section .060 does implicate the First Amendment because it “prohibits all aid, not only aid provided for the purpose of furthering prostitution.”¹¹ But this argument ignores the express language of

⁶ RCW 9A.88.060(1) (emphasis added).

⁷ Douglass, 115 Wn.2d at 182.

⁸ 92 Wn.2d 193, 195, 595 P.2d 912 (1979).

⁹ Id. at 195-96.

¹⁰ Id. at 196.

¹¹ Reply Br. of App. at 8.

the challenged clause. Section .060 provides a person advances prostitution if, “acting other than as a prostitute or as a customer thereof, he or she causes or aids a person *to commit or engage* in prostitution.”¹² The statute does not prohibit general aid to a known prostitute. Rather, the statute prohibits an individual from aiding a person to commit prostitution. Buffalino fails to provide any authority that the First Amendment protections extend to conduct that “aids a person to commit or engage in prostitution.”

Although Buffalino challenges a different portion of .060 than at issue in Cann, the analysis in Cann extends to the entire statute: “Speech directed toward the persuasion of another to enter into an illegal arrangement does not enjoy constitutional protection,” and “[t]hat is the only kind of speech punished under this statute.” RCW 9A.88.060 does not implicate the First Amendment. Buffalino cannot challenge .060 as unconstitutionally vague on its face.

And Buffalino fails to provide any argument as to how RCW 9A.88.060 is unconstitutionally vague as applied to his own conduct. Rather, he relies on hypothetical scenarios to illustrate that .060 is unconstitutionally vague. “Therefore, a person who gives food or drink to another whom he or she knows to engage in prostitution would ‘aid’ in its commission by helping him or her

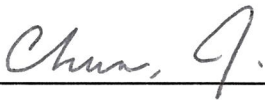
¹² RCW 9A.88.060(1).

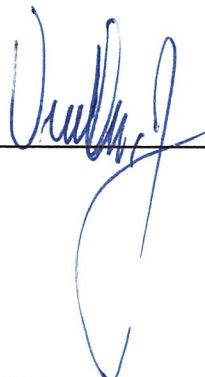
survive, thereby advancing prostitution.”¹³ Buffalino does not suggest that his own conduct was of an equally innocent nature.¹⁴

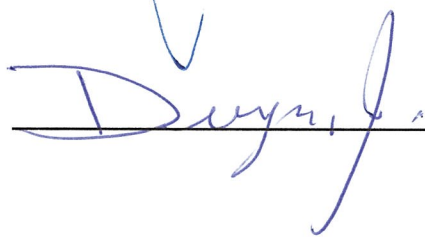
Because RCW 9A.88.060 does not implicate First Amendment issues and because Buffalino fails to argue .060 is unconstitutional as applied to his conduct, his appeal fails.

Therefore, we affirm.

WE CONCUR:







¹³ Appellant’s Br. at 15.

¹⁴ See Cann, 92 Wn.2d at 195 (“The second contention is that the last clause of RCW 9A.88.060(1), defining ‘advances prostitution,’ is unconstitutionally vague in that it could be construed to forbid innocent conduct which might incidentally advance prostitution. A neighbor gratuitously shoveling snow from the sidewalks of a house of prostitution, or a taxicab driver taking a prostitute to meet a client are cited as examples. This is the only clause, the appellant says, into which his conduct can reasonably be fitted. He does not suggest, however, that his own conduct was of an equally innocent nature.”).

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

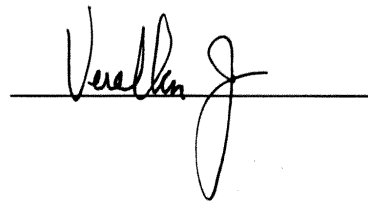
STATE OF WASHINGTON,)	No. 77587-1-I
)	
Respondent,)	
)	
v.)	
)	ORDER DENYING
JOSEPH BUFFALINO,)	MOTION FOR
)	RECONSIDERATION
Appellant.)	
_____)	

Appellant filed a motion for reconsideration of the opinion filed April 22, 2019. Following consideration of the motion, the panel has determined the motion should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE PANEL:



A handwritten signature in black ink, appearing to read 'Verallin J', is written over a horizontal line.

NIELSEN, BROMAN & KOCH P.L.L.C.

June 19, 2019 - 12:00 PM

Transmittal Information

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Appellate Court Case Title: State of Washington, Respondent v. Joseph Buffalino, Appellant
Superior Court Case Number: 17-1-01427-0

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