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Division III
State of Washington
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STATE OF WASHINGTON
9/20/2019
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SUPREME COURT NO. 97678-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GERALD COMPLITA,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION THREE

Court of Appeals No. 36641-3-III
Kitsap County No. 17-1-01538-3

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, GERALD COMPLITA, by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Complita seeks review of the August 20, 2019, unpublished decision of Division Three of the Court of Appeals affirming his convictions.

C. ISSUES PRESENTED FOR REVIEW

1. Where the trial court admitted ER 404(b) evidence without identifying a proper purpose and without balancing the probative value of the evidence against its prejudicial effect, does improper admission of the propensity evidence require reversal?

2. This Court should review the issues raised in the Statement of Additional Grounds for Review.

D. STATEMENT OF THE CASE

In October 2017, the Missing and Exploited Children Task Force conducted an "undercover operation" for the purpose of arresting people who were trying to commit sex crimes with children. 3RP[1] 83. As part of this operation, detectives placed ads in the "Casual Encounters" section of

[1] The Verbatim Report of Proceedings is contained in five volumes, designated as follows: 1RP—12/4/17; 2RP—12/4/17, 2/16/18; 3RP—1/3, 4, 8/18; 4RP—1/9, 10/18; 5RP—1/10/18.

Craigslist. 3RP 96-98. Craigslist allows users to place personal ads only after they confirm that they are 18 years old or older. 3RP 85, 108. The Casual Encounters section is intended for use by adults looking to meet for "no strings attached sex." 3RP 84.

Gerald Scott Complita responded to an ad placed by a detective on October 11 titled "Young, looking for older daddy." 3RP 100, 103. The detective who was actually conducting the chat told him she was 13 years old. 3RP 154. Complita continued to chat for a while, including some sexually explicit conversation. 3RP 154-56. He then responded, "Oh, well, … Prison doesn't appeal to me anyway. Peace." 3RP 156. That was the end of the conversation. 3RP 180.

The next day Complita responded to a different ad placed by detectives. This one was titled, "Crazy and young, looking to explore." 3RP 102-03. The detective conducting the chat mentioned that Complita had already turned her down, saying he doesn't like prison. 3RP 160. Complita responded that if she was able to keep it to herself, they should get acquainted. 3RP 160. The conversation continued through text messages. 3RP 161. When the detective asked for money for nude photos, Complita responded that she sounded like an old pro. 3RP 164. There was no other mention of age in the conversation. 3RP 183-84.

After some discussion about sexual experience, Complita asked where they could meet. 3RP 164-70. They agreed to meet at a 7-Eleven in Bremerton. Complita said he could be there in 20 minutes, and the detective told him to get condoms. 3RP 173-74. Complita drove to the location the detective gave him, parked, texted that he was there, and a few seconds later drove away. 3RP 174; 4RP 253. He was arrested in a traffic stop and charged with attempted second degree rape of a child and felony communication with a minor for immoral purposes. 3RP 175; 4RP 251-52; CP 58-61.

Complita testified that he goes to Casual Encounters frequently, looking for people to hang out with. 4RP 261. He responded to the ad on October 11 thinking it was someone interested in dating an older man. 4RP 262. When the person claimed to be 13 years old he did not believe it, because he didn't think kids would use Craigslist. 4RP 263. The picture the detective sent him looked like it might be a teenager, however, and since he had no intention of getting together with a child, he ended the conversation and deleted it from his phone. 4RP 263-64.

Complita responded to a different ad the next day. 4RP 265. He asked for a picture in that conversation, and he didn't recognize the one he received as the same person in the picture from the day before. This person looked to be 17 or 18 years old. 4RP 265. But after he arrived at

the 7-Eleven parking lot and was waiting for a response, he started to think there might be a connection between this conversation and the one from the day before, so he decided he better go home. 4RP 266.

Complita admitted that he had had graphic sexual conversations in response to both ads, but he would not have had those conversations if he had believed the person he was talking to was 13 years old. 4RP 266-67. When he drove to the 7-Eleven, he believed he was going to meet an adult. 4RP 267. If a 13 year old had met him and gotten into his truck, he would have told her to get out. 4RP 270.

On cross examination Complita explained that he did not realize the person he was chatting with on October 12 was the same person he had chatted with the day before. The fact that she said he had already turned him down because he doesn't like prison did not make the connection for him. A lot of his Craigslist conversations end with him saying that when the person he is talking to asks for money to spend time with him. 4RP 282-83. He told the detective they could get acquainted if she could keep it to herself, because he did not want his girlfriend to know about their meeting. 4RP 285. When the conversation proceeded and she did not ask for money, he started thinking this was an operation run by law enforcement. 4RP 287.

Following Complita's testimony on direct examination, the State moved to admit evidence of an email conversation Complita had had with an undercover operative in 2015. 4RP 271. The defense had moved in limine to exclude this evidence under ER 403 and ER 404(b), and the State agreed it was inadmissible in its case in chief. CP 11; 3RP 54. The State argued, however, that Complita's testimony opened the door to the 2015 undercover operation:

> Your Honor, it's – he is claiming that it was all a mistake. It's not a mistake. It's obvious that he has done this before and to – the State should be able to present this evidence, Your Honor, especially now that he has opened the door and said his intent was not to have sex with children and that he has never intended that at all and that he'd basically never done this before and that he had no clue that this is going on on Craigslist when it's very clear that he did.

4RP 271-72.

Defense counsel responded that although Complita had carried on an email conversation with the detective in 2015, he did not go through with trying to meet up with her. Nothing Complita testified to on direct exam opened the door to the 2015 conversation. 4RP 272. He just testified he does not intend to have sex with 13 year olds. 4RP 272. The State responded:

> Your Honor, the State believes that this information is admissible to show knowledge to rebut a claim of accident or mistake and admissibility to show intent, admissibility to show motive and he very clearly testified that he never wanted to be with children,

> didn't know that children were even on Craigslist, and that is – he had no intent to get with children at all.

4RP 273. The court asked the State what evidence rule it was referring to, and the prosecutor responded. "I am looking at 404(b)." 4RP 273-74.

When defense counsel argued that Complita's testimony did not open the door to the previously excluded evidence, the prosecutor referred the court to Tegland's analysis of ER 404(b). 4RP 274. The State argued that evidence of other misconduct may be admissible to show intent, and here intent is actually at issue. 4RP 274-75.

The court read through the emails. It noted that

> The State wants to admit it to show that he did, in fact, intend to have sex with a 13 year old because that is what is reflected in the 2015 e-mails contradicting – directly contradicting what he just said on the stand: He didn't want to have sex with kids or have a relationship or have anything to do with them. … so this directly contradicts what he just said on the stand so I am going to allow it.

4RP 275-76.

On cross examination the State asked Complita about the email conversation he had had in response to a Craigslist ad in 2015. 4RP 290. The ad and the emails were admitted as exhibits and published to the jury, and the State went through them line by line. 4RP 298-312. In the emails the detective told Complita she was 13 years old, they had a graphic sexual conversation and talked about meeting, and then Complita ended the contact. *Id*. Complita testified that he knew this was a sting operation.

He could tell the emails were not from a child, and once the sexual discussion started he did not believe the person he was talking to was 13, regardless of what she said. 4RP 312-14. He had no intention of getting with a child in 2015, and he was not planning to have sex with an underage girl when he drove to the 7-Eleven on October 12, 2017. 4RP 313, 320.

The State relied on the 2015 emails in closing argument to show that, contrary to his testimony, Complita intended to have sex with a 13 year old:

> He told you that he had no intent of harming a child, and he had no idea that this kind of thing was happening on Craigslist; that there were children for sale on Craigslist. But that was directly contradicted by the fact that he has done this – he had done this in a 2015 operation, so he knew. He took part in that.
>
> He talked to that undercover officer thinking that she was 13 years old for a three-day period about all sorts of sexual things that he wanted to do to her.

4RP 377.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THE COURT OF APPEALS'S DECISION CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE. RAP 13.4(B)(1), (4).

Under ER 404(b), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may however, be admissible for other purposes,

such as proof of motive, opportunity, intent, preparation, planning, knowledge, identity, or absence of mistake or accident." ER 404(b) is a categorical bar to the admission of evidence for the purpose of proving a person's character and showing that the person acted in conformity with that character. *State v. Gresham*, 173 Wn.2d 405, 420, 269 P.3d 207 (2013). "ER 404(b) forbids such inference because it depends on the defendant's propensity to commit a certain crime." *State v. Wade*, 98 Wn.App. 328, 336, 989 P.2d 576 (1999).

Evidence of prior misconduct "*may*, however, be admissible for any other purpose, depending on its relevance and the balancing of its probative value and danger of unfair prejudice." *Gresham*, 173 Wn.2d at 420. "ER 404(b) is only the starting point for an inquiry into the admissibility of evidence of other crimes; it should not be read in isolation, but in conjunction with other rules of evidence, in particular ER 402[2] and 403[3]." *State v. Saltarelli*, 98 Wn.2d 358, 361, 655 P.2d 697 (1982). ER 404(b) incorporates the relevancy and unfair prejudice analysis found in ER 402 and ER 403. *Saltarelli*, 98 Wn.2d at 361-62. The

[2] "All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible." ER 402.

[3] "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." ER 403.

evidence must be logically relevant to a material issue before the jury, which means the evidence is "necessary to prove an essential ingredient if its probative value is substantially outweighed by the danger of unfair prejudice." *Id*. at 361-62. In considering whether evidence is admissible under ER 404(b), doubtful cases should be resolved in favor of the defendant. *Wade*, 98 Wn. App. at 334.

"A trial court must always begin with the presumption that evidence of prior bad acts is inadmissible." *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). When determining admissibility under ER 404(b), the trial court must (1) find the alleged misconduct occurred by a preponderance of the evidence; (2) identify the purpose for admission; (3) determine whether the evidence is relevant to prove an element of the crime charged; and (4) weigh the probative value against the prejudicial effect. *State v. Foxhoven*, 161 Wn.2d 168, 175, 163 P.3d 786 (2007). This analysis must be conducted on the record. *Foxhoven*, 161 Wn.2d at 175. If the only relevant purpose for the evidence is to establish the defendant's criminal propensity, it must be excluded. *Gresham*, 173 Wn.2d at 420.

The trial court concluded the 2015 emails were admissible because they directly contradicted Complita's testimony that he did not intend to have sex with a 13 year old. 4RP 275-76. There is nothing in the prior

emails that contradicts Complita's testimony, however. Complita testified that he did not think the person he was talking to in this case was 13 years old, he would not have gone to meet her if he did, and he did not intend to have sex with a child. 4RP 263, 266-67, 270. The 2015 emails are consistent with this testimony. They show that he carried on a sexual conversation with someone who claimed to be 13 but that he ended the conversation without making any attempt to meet her. 4RP 312-14.

But the court's ruling allowed the State to present, line by line, Complita's sexually explicit conversation with a detective claiming to be 13. The printed conversation was also admitted as an exhibit. This evidence served no purpose other than to make Complita seem like an unsavory character who was likely to commit the charged offense. The court erred in admitting the evidence because it served no legitimate purpose.

Even if, as the State argued, the ER 404(b) evidence was relevant to Complita's intent, the trial court erred in failing to balance the probative value of this evidence against its prejudicial effect on the record.

Evidence of prior misconduct *may* be admissible for a non-propensity purpose only if its probative value outweighs the danger for unfair prejudice. *Gresham*, 173 Wn.2d at 420; *Salterelli*, 98 Wn.2d at 361-62. Evidence of prior bad acts, including acts which are unpopular or

disgraceful, must not be admitted “without a careful consideration of relevance and a realistic balancing of its probativeness against its potential for prejudice.” *Salterelli*, 98 Wn.2d at 364-65; *State v. Halstien*, 122 Wn.2d 109, 126, 857 P.2d 270 (1993). This Court held long ago that “[w]ithout such balancing and a conscious determination made by the court on the record, the evidence is not properly admitted.” *State v. Tharp*, 96 Wn.2d 591, 597, 637 P.2d 961 (1981).

"[A] judge who carefully records his reasons for admitting evidence of prior crimes is less likely to err, because the process of weighing the evidence and stating specific reasons for a decision insures a thoughtful consideration of the issue." *State v. Jackson*, 102 Wn.2d 689, 694, 689 P.2d 76 (1984). For this reason, a trial judge errs when she does not enunciate the reasons for her decision. *Jackson*, 102 Wn.2d at 694. "Careful consideration and weighing of both relevance and prejudice is particularly important in sex cases, where the potential for prejudice is at its highest." *State v. Coe*, 101 Wn.2d 772, 780-81, 684 P.2d 668 (1984). There must be an “intelligent weighing” of potential prejudice against probative value.” *Salterelli*, 98 Wn.2d at 363.

The record in this case fails to show that the court gave any consideration, much less careful consideration, to the balance of probative value and prejudicial effect. The court admitted evidence of the 2015

emails without any reference to these factors, stating only that Complita continued to talk about having sex after the detective told him she was 13, and "this directly contradicts what he just said on the stand, so I am going to allow it." 4RP 275-76.

The Court of Appeals states in its opinion that the trial court was not required to go through the four-part test in this case because the evidence was not admitted as substantive bad act evidence but solely for impeachment purposes. Opinion, at 4-5. This characterization is contradicted by the record. The parties argued about admissibility under ER 404(b), and when the court asked the prosecutor the basis for admission, the prosecutor specifically responded "I am looking at 404(b)." 4RP 273-74. While there was also discussion about whether Complita's testimony opened the door to admission, and the court found it did, the record does not support the Court of Appeals's determination that "the 2015 e-mails were not admitted as substantive bad acts evidence." Opinion at 4-5. The jury was given no instruction limiting its use of this evidence, so that it was permitted to consider every detail of the prior emails as substantive evidence.

The Court of Appeals's holding that the trial court was not required to conduct the ER 404(b) balancing on the record conflicts with prior decisions of this Court, and review should be granted. RAP

13.4(b)(1). "The purpose of the rules of evidence is to secure fairness and to ensure that truth is justly determined." *Wade*, 98 Wn. App. at 333. When the trial court is permitted to disregard those rules and the case authority for proper application of them, the public interest in fair trials is harmed. Review is therefore appropriate under RAP 13.4(b)(4).

Had the trial court considered how the ER 404(b) evidence might prejudice Complita, it likely would not have admitted it. Without the improperly admitted evidence, there is a reasonable probability the outcome of Complita's trial would have been different.

It was undisputed that Complita ended the conversation on October 11 without any plans to meet the person he was talking to. It was also undisputed that, after driving to the 7-Eleven on October 12, Complita left the area without waiting to meet the person he had been chatting with. He testified that he never believed the person he was conversing with was underage, and he had no intent to have sex with a child. In fact, he headed home as soon as he made the connection that the person he was going to meet might be the same person who had said she was 13 the day before. Without the ER 404(b) evidence detailing his sexually explicit conversation with an undercover operative claiming to be 13 two years earlier, there is a reasonable probability the jury would have had a reasonable doubt about the charges in this case.

A jury's natural inclination is to reason that having previously committed bad acts, the accused is likely to have reoffended by acting in conformity with that character. *State v. Bacotgarcia*, 59 Wn. App. 815, 822, 801 P.2d 993 (1990), *review denied*, 116 Wn.2d 1020 (1991). The admission of the ER 404(b) evidence allowed the jury to follow its natural inclination and infer Complita acted in conformity with his character and therefore likely committed charged offenses. Erroneous admission of the ER 404(b) evidence prejudiced the defense, and Complita's convictions must be reversed.

2. THIS COURT SHOULD REVIEW ISSUES RAISED IN THE STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW.

Complita raised several arguments in his statement of additional grounds for review, which the Court of Appeals rejected. Those arguments are incorporated herein by reference.

F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Complita's convictions.

DATED this 19th day of September, 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

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WSBA No. 20260
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Certification of Service by Mail

Today I caused to be mailed a copy of the Petition for Review in *State v. Gerald Complita,* Court of Appeals Cause No. 36641-3-III, as follows:

Gerald Complita/DOC#404868
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Catherine E. Glinski
Done in Manchester, WA
September 19, 2019

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

STATE OF WASHINGTON, Respondent, v. GERALD SCOTT COMPLITA, Appellant.	)))))))))	No. 36641-3-III UNPUBLISHED OPINION

PENNELL, A.C.J. — Gerald Scott Complita appeals his convictions for one count of attempted second degree rape of a child and one count of communicating with a minor for immoral purposes. We affirm his convictions, but remand for correction of a scrivener's error in the judgment and sentence.

FACTS

Mr. Complita responded to three personal advertisements created by the Washington State Patrol as part of an undercover sting operation aimed at child predators. The advertisements were placed in the "Casual Encounters" section of Craigslist. One was placed in 2015; the remaining two were from 2017. All of the advertisements indicated they had been placed by a young female and were suggestive of exploring sex with an older male. During follow-up conversations, the person who posted the advertisements claimed to be 13 years old. Mr. Complita sent sexually explicit electronic

communications in connection to all three advertisements.[1] But only in 2017 did he attempt to make physical contact with the subject of the advertisement by arranging to meet at a 7-Eleven. Mr. Complita was arrested in a traffic stop after he left the parking lot of the 7-Eleven.

The State charged Mr. Complita with one count of attempted second degree rape of a child and one count of communicating with a minor for immoral purposes. The charges stemmed solely from his 2017 activities. The case proceeded to trial.

Prior to trial, Mr. Complita filed a motion in limine to exclude reference to the 2015 e-mail exchanges. During argument on the motion, the State represented it would not reference the 2015 evidence in its case in chief, but it would seek to readdress the issue if Mr. Complita opened the door to admissibility.

At trial, Mr. Complita testified in his own defense. He admitted to sending the 2017 e-mails and text messages, but claimed he did not believe he was corresponding with a 13-year-old girl. "I wasn't going to try and get with a kid off of Craigslist," he stated. 2 Report of Proceedings (Jan. 9, 2018) at 263. "I didn't even think that kids would use Craigslist." *Id*. Mr. Complita claimed that when he drove to the meeting

[1] Mr. Complita's communications were primarily sent via e-mail. However, his communications in response to the third advertisement moved from e-mail to text message.

place, he believed he was going to meet up with an adult. Mr. Complita protested that he was "not interested in having sex with kids." *Id*. at 270.

At the close of Mr. Complita's direct examination, the State asked to address the court outside the presence of the jury. As it presaged during the in limine discussion, the State moved to admit evidence from the 2015 sting operation. According to the State, the evidence was relevant to impeach Mr. Complita's claim that he did not intend to have sex with a minor. The court reviewed the 2015 e-mails and granted the State's request over a defense objection. The court explained the 2015 e-mails "directly [contradict] what [Mr. Complita] just said on the stand, so I am going to allow it." *Id.* at 276. On cross-examination, the State introduced the 2015 e-mails by going through them with Mr. Complita.

The State's closing argument focused on Mr. Complita's credibility. The State argued Mr. Complita's denial of having sexual interest in a 13 year old was discredited not only by his written communications in 2017, but also those from 2015. It argued:

> He told you that he had no intent of harming a child, and he had no idea that this kind of thing was happening on Craigslist; that there were children for sale on Craigslist. But that was directly contradicted by the fact that he has done this—he had done this in a 2015 operation, so he knew. He took part in that.

Id. at 377. The jury convicted Mr. Complita as charged.

Mr. Complita was sentenced to a total of 76.5 months' imprisonment and a lifetime term of community custody, as required by RCW 9.94A.507(5). However, the trial court attached that term of community custody to count II—the conviction for communicating with minor for immoral purposes—instead of count I, which was the conviction for attempted second degree rape of a child.

Mr. Complita brings this timely appeal from that judgment and sentence.

ANALYSIS

Introduction of the 2015 e-mails

Mr. Complita argues the trial court abused its discretion in allowing the State to introduce evidence of the 2015 e-mails pursuant to ER 404(b) without going through the four-part process applicable to introduction of prior bad act evidence. *State v. Gresham*, 173 Wn.2d 405, 421, 269 P.3d 207 (2012). This claim fails because the trial court did not grant leave for introduction of the evidence under ER 404(b). Instead, the trial court explained in its oral ruling that the evidence was admissible for impeachment purposes. Admission of this type of evidence is governed by ER 613. Indeed, this is what counsel for the State argued in closing.[2] Because the 2015 e-mails were not admitted as

[2] This also appears to be defense counsel's understanding, given that counsel did not object to the trial court's failure to conduct the four-part ER 404(b) analysis.

substantive bad act evidence, the trial court was not required to go through the four-part test applicable to ER 404(b).

Mr. Complita also argues the 2015 e-mails should not have been admitted as impeachment evidence because they did not contradict his trial testimony. According to Mr. Complita, at no time in 2015 or 2017 did he actually believe he was conversing with a minor. He thus concludes there was no basis for impeachment.

This alternative argument fails because it goes to the weight of the impeachment evidence, not its propriety. The trial court had a tenable basis for determining the 2015 e-mails could be interpreted as expressing an intent to engage in sexual relations with a 13-year-old minor. That reasonable interpretation contradicted Mr. Complita's trial testimony that he was never interested in such activity. Mr. Complita was free to try to explain that he did not mean what he said. *See* ER 613(b). But that does not undermine the tenable basis for the trial court's evidentiary ruling.

Scrivener's error

Mr. Complita's judgment and sentence contains contradictory statements regarding imposition of community custody conditions. It is noted on page three that Mr. Complita was sentenced to 12 months' community custody for count II (communication with a minor for immoral purposes). But on page four it states Mr. Complita was sentenced to a lifetime term of community custody for count II.

This contradictory language is an apparent scrivener's error. Only count I (attempted second degree rape of a child) subjects Mr. Complita to a lifetime term of community custody. RCW 9.94A.507(5); RCW 9A.44.076(2); RCW 9A.20.021(1)(a). Because Mr. Complita received a sentence of 12 months' incarceration on his conviction for communication with a minor for immoral purposes, the maximum term of community custody for count II was one year. RCW 9.94A.702(1)(a). We remand so the judgment and sentence may be corrected to reflect that the lifetime term of community custody applies to count I.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Pursuant to RAP 10.10, Mr. Complita has filed a statement of additional grounds for review identifying three issues he believes warrant reversal, and one relating to the conditions of community custody upon release. We disagree with each of Mr. Complita's claims.

Evidentiary sufficiency

Mr. Complita argues the trial evidence was insufficient to prove he knew his would-be victim was 13 years of age. We disagree. The content of Mr. Complita's e-mails and text messages indicated correspondence with a 13-year-old minor. While Mr. Complita was free to try to argue that he did not believe the individual in question was

age 13, the evidence was sufficient to show otherwise. *See State v. Johnson*, 173 Wn.2d 895, 909, 270 P.3d 591 (2012).

Outrageous government conduct

Mr. Complita argues the State engaged in outrageous government conduct when it used Craigslist for an undercover sting operation in violation of Craigslist's policy agreement. We disagree. Undercover operations such as the one here are fairly standard. They do not shock the conscience as required for an outrageous government conduct claim. *See State v. Markwart*, 182 Wn. App. 335, 351, 329 P.3d 108 (2014).

Exclusion of entrapment defense

The defense bears the burden of establishing the elements of an entrapment defense. *State v. Trujillo*, 75 Wn. App. 913, 918, 883 P.3d 329 (1994). This is no easy task. "The defense of entrapment is not established by showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime." RCW 9A.16.070(2). Here, the evidence in 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. *Trujillo*, 75 Wn. App. at 918.

Community custody condition barring alcohol possession

Mr. Complita claims that because his crime did not involve alcohol, the court lacked authority to impose a community custody condition prohibiting alcohol possession. This claim fails because a ban on alcohol possession or consumption is permitted by statute regardless of offense type. RCW 9.94A.703(3)(e).

CONCLUSION

The judgment of conviction is affirmed. This matter is remanded for correction of a scrivener's error relating to the count of conviction giving rise to Mr. Complita's lifetime term of community custody.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, A.C.J.

WE CONCUR:

Korsmo, J.

Siddoway, J.

GLINSKI LAW FIRM PLLC

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Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v. Gerald Complita, Appellant
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