

No. 49106-1-II

FILED  
COURT OF APPEALS  
DIVISION II  
2017 JAN 30 AM 11:19  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

Court of Appeals, Division II  
of the State of Washington

State of Washington

Respondent,

v.

James O. Wright Jr.

Appellant,

Appeal from Thurston County Superior  
Court

Honorable Judge Gary R. Tabor

No. 16-1-00211-34

Statement of Additional  
Grounds

James O. Wright Jr. DOC# 390826  
Coyote Ridge Corrections Center  
Unit DA 33-24  
P.O. Box 769  
Connell, WA 99326

State of Washington

Respondent,

v.

James O. Wright Jr.

Appellant,

Statement of  
Additional  
Grounds

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## I.

### Introduction.

Appellant was sentenced to 60 months to life on June 23<sup>rd</sup>, 2016 in Thurston County Superior Court for a crime defendant did not commit. Appellant submits this RAP 10.10 Statement of Additional Grounds in support of his appeal.

Appellant was convicted of Indecent-Liberties Forcible-Compulsion.

## II.

### Assignments of Error

- 1) The alleged victim testified defendant did not cause her to have sexual contact with the defendant
- 2) The judge struck phrases from the jury instructions lessening the states burden

of proof to convict.

- 3) The prosecutor misinformed the jury in his closing arguments when switching between the terms physical and sexual contact and failed to meet the statutory standard.
- 4) Defense counsel rendered ineffective assistance failing to conduct a pre-sentence investigation into mitigating factors.
- 5) Defense counsel rendered ineffective assistance failing to cross-examine states witnesses.
- 6) There are overwhelming inconsistencies in the testimonies of states witnesses which prejudiced defendant.

# ARGUMENTS

1) The alleged victim testified defendant did not cause her to have sexual contact with the defendant.

(see RP 95, line 20)

Q. Did you have any sexual contact?

A yes or no question, ma'am.

A. No.

Continued...



(cont)

3

(see RP 106) (line 13)

Instruction No. 7. States;

To convict the defendant of the crime of indecent liberties, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about February 7, 2016 the defendant knowingly caused Tammy L. Stampfli to have sexual contact with the defendant; The state failed to prove this element.

The alleged victim, Tammy L. Stampfli, testified a second time that she had no sexual contact with the defendant when answering the prosecutors question, (see RP 96) (line 4)

Q. Just to clarify. Did you touch Mr. Wright in any way?

A. No.

- Conclusion -

Mr. Wright did not cause Tammy L. Stampfli to have sexual contact with the defendant.

2) Phrases were struck from jury instructions lessening the states burden of proof to convict.

1) Kidnapping was struck from forcible compulsion (see RP 45) (line 2)

2) intentionally was struck from knowingly (see RP 45) (line 12)

3) married was struck (see RP 46) (line 7)

Whether the trial court erred in striking "intentionally" from the knowingly instruction? The last paragraph says that a person acts knowingly "if" the person acts intentionally. knowingly and intentionally become inseparable with the word "if."

By striking the last phrase of putting a person in fear of being kidnapped or another person would be kidnapped cancels the forcible compulsion element. (see RP 45) (line 2)

The judge states in RP 45, line 4, "I don't plan to include that phrase because I don't think that meets with the facts, at least as I understand them in this case."

When the phrase does not meet with the facts, the element cannot be charged to defendant.

Did the trial court err in charging defendant with forcible compulsion when it did not meet with the facts?

"A STATUTE WHICH ALTERS ITS TERMS IMPOSES NEW CONDITIONS."

Did the trial court err when it struck phrases from the jury instructions which resulted in lessening the states burden of proof to convict?

# Jury Instructions

"Defendants argument that the to-convict instruction did not contain all of the elements of robbery could be considered by the appellate court even though defendant did not object at trial because the omission of an element of a charged crime is manifest error affecting a constitutional right". U.S. Const. amend. VI and Wash. Const. art. 1 § 22 require that a jury be instructed on all elements of a charged crime and a criminal defendants right to due process of law is violated by jury instructions that omit an essential element. State v. Ritchie 191 Wn. App. 916, 365 P.3d 770, 2015 Wash. App. LEXIS 3050 (Wash. Ct. App. 2015)

Washington must defer to the United

States Supreme Court and follow the rule adopted in Neder v. United States, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed. 2d 35 (1999) holding that a jury instruction that relieves the prosecution of its burden to prove an element of a crime is subject to harmless error analysis. State v. Jennings, 111 Wn. App. 54, 44 P.3d 1, 2002 Wash. App. LEXIS 573 (Wash. Ct. App. 2002)

As in the present case State v. Jennings would be applicable. (see supplement) <sup>insert supplement HERE.</sup> counsel's failure to object (next page)

3) Defense counsel rendered ineffective assistance in failing to cross-examine the states sole witness. The prosecution asks a total of 151 questions of the sole witness and many of the answers were inconsistent. (see RP 75 - 93)\* omitted due to expense to copy.

Defense counsel asks 1 single question of the alleged victim and sole witness.

"Counsel's performance was thus deficient. In addition, the defendant was prejudiced by counsel's poor performance because the only evidence against the defendant was the victim's testimony".

My counsel should have conducted a thorough cross-examination of the States witnesses due to the inconsistencies of the sole witnesses answers under direct examination. Defense counsel had the opportunity to raise reasonable doubt through cross-examination of the States sole witness but failed to do so.

In Brown V. State, the Nevada Supreme court hold that the defense counsel

# SUPPLEMENT

placement between  
(7-9)

## COUNSELS FAILURE TO OBJECT TO ERRONEOUS JURY INSTRUCTION

IN

COX V. DONNELLY 432 F.3d 388, 389-90  
(2d Cir. 2005) (counsel's repeated failure to object  
to erroneous jury instruction was ineffective  
assistance because "[counsel's] performance fell  
below prevailing standards of professional conduct"  
and, but for counsel's deficiency, trial outcome  
might have been different)

As in the present case defense counsel should  
have objected to erroneous jury instructions.

(see RP 45)

This failure to object to erroneous jury instructions results to ineffective assistance of counsel.



(9)

rendered ineffective assistance in failing to examine the victim during the defendant's sexual assault trial. Defense Counsel testified that he felt the victim was lying about the alleged assault by the defendant, but that attacking the victim on cross-examination would create sympathy for her with the jury. Counsel further testified that instead, he intended to damage the victim's credibility by calling witnesses who would testify that the victim had lied in the past about being sexually assaulted. At trial, the district court allowed the witness to testify about the victim's general dishonesty, thereby avoiding any testimony about the victim's prior sexual history.

The court found defense counsel's failure to cross-examine the victim was "a misapprehension of proper trial pro-

cedare", and a clear indication of ineppitude.<sup>31</sup> The court stated that a lack of understanding of proper trial procedure, which results in counsel's failure to cross-examine the victim, falls below an objective standard of reasonableness.

"The court found that the defendant was prejudiced by counsel's error. The court stressed that there were no other witnesses to the alleged crime, no corroborating evidence, and that the case came down to the victim's word against the defendant's. Cross-examining the victim was the only way to attack her credibility, and counsel failed to zealously represent his client in not doing so.

As the defendant was denied his constitutional right to confront his accuser, the court found the defendant was prejudiced and that the results of the trial were unreliable.

4) Defense counsel stated in opening argument he was reserving his opening statement. (see RP 42)(line 21)

Mr. Foley: "Not at this time. Your Honor. We reserve our opening."

Yet, he never made an opening statement, which prejudiced the defendant.

In Anderson v. Butler,<sup>18</sup> the First Circuit identified ineffective assistance of counsel where counsel in opening argument promised to present a psychiatrist and a psychologist to

testify that the murder defendant, accused of stabbing his wife to death in the presence of neighbors, was acting "like a robot programmed on destruction," but failed to produce these witnesses at trial.<sup>19</sup> The Eighth Circuit initially noted that "[two members of this panel have long held that opinion that little is more damaging than to fail to produce important evidence that had been promised at the opening]."<sup>20</sup>

The court continued to list the effects such an unfilled promise would have on a jury. The court criticized the opinions of the lower courts, both state and federal, who determined that counsel's decision not to call the witnesses were reasonable. The error according to the Eighth Circuit, was in the lower courts failure to give sufficient consideration to the prejud-

icial effect of the promise made in the opening statement. The court acknowledged that we might have no quarrel with counsel's decision to call or not to call, as a strategic decision, had the matter stood alone.

The court concluded that in light of the opening statement, it was a very bad decision, or, if it was still wise because of the damaging collateral evidence, it was inexcusable to have given the matter so little thought at the outset as to have made the opening promise.

Finally, the court determined, "we cannot but conclude that to promise even a condensed recital of such powerful evidence and then not to produce it, could not be disregarded as harmless."

Strikingly, the court went so far as to

State, "we find it prejudicial as a matter of law"

- As in the present case the defendant was prejudiced because counsel failed to make an opening statement.

5) The prosecutor in his closing argument when switching between the terms physical contact and sexual contact failed to meet the statutory standard.

(See RP 112)(line 18)

Mr. Juri states;

"The example I used with Ms. Stampfli was "you're standing in a crowd, you're standing shoulder to shoulder with someone, you're having physical contact with them, someone bumps into you, you're actually having physical contact with the person you bumped into. It was their action that caused it. So that's the physical contact."

In this example, the prosecutor describes physical contact, not "sexual contact."

The prosecutor describes physical contact 3 different times, he prefaced the 3 descriptions by saying, "caused Tammy Stampfli to have sexual contact" with the defendant."

The prosecutor starts with sexual contact, then ends with "physical contact" in each of the 3 descriptions.

The prosecutor subtly camouflages physical contact as being sexual contact or at least equivalent to sexual contact.

The prosecutor makes an analogy regarding physical contact as being the same as sexual contact.

Sexual contact and physical contact are two different things, which require two different definitions.

The analogy the prosecutor makes here lessens the States burden of proof to

# Convict.

As in the present case the defendant was prejudiced because the states burden of proof from the Statutory standard was lessened by the prosecutors analogy of physical contact and sexual contact.

- 6) Defense Counsel rendered ineffective assistance by failing to conduct a presentence investigation into mitigating factors. (see RP 132-133)(line 16)

Defense counsel failed to address defendants history of education, employment, social background, medical history, type of environment in which to return, resources that could help, ect. during sentencing phase.

Defense counsel's failure to conduct a pre-sentence investigation into mitigating factors prejudiced the defendant resulting in ineffective assistance of counsel.

7) Defense Counsel in his closing argument was ineffective and unethical. The prosecutor during trial failed to prove it's case beyond a reasonable doubt, because the alleged victim and sole witness testified to defense counsel that she had "no" sexual contact with the defendant which established reasonable doubt and (see RP 95)(line 20) insufficient evidence.

Q. Did you have any sexual contact?  
A yes or no question, ma'am.

A. No.

In this light defense counsel, in his closing argument should have highlighted the fact that the alleged victim and sole witness testified she had no sexual contact with the defendant, demonstrating the state failed to prove it's case. Instead defense counsel made an "admission of guilt"... (see RP 117)(line 15) "He might

have done something and it's a horrible thing he did, but he did not cause her to do something"...

Whether defense counsel was ineffective when he stated, "He might have done something and it's a horrible thing he did"...

When there was no jury instruction given for a "lesser included charge"?

This shows that counsel was not functioning as "counsel".

Defendant shows that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the U.S. Const. amend VI.

Representation fell below an objective standard of reasonableness.

"Counsel's errors were so serious as to deprive the defendant of a fair trial whose result was reliable. Counsel's errors prejudiced defendant's defense."

"There is a reasonable probability that the outcome of the proceeding would have been different but for counsel's errors."

"Washington has adopted the Strickland test to determine whether a defendant had constitutionally sufficient representation."



# Use your Common Sense Inconsistencies and questionable facts regarding alleged victims testimony

Use your common sense - would a reasonable person after being attacked as described by the alleged victim...

- 1) follow the attacker to the door to let them out?
- 2) then text their colleague?
- 3) wait for a return call?
- 4) then call police?
- 5) then, call their husband?

Or, would a reasonable person -

- 1) move away from the attacker?
- 2) immediately call the police?
- 3) call their husband?

and -

4) would you even consider texting your colleague before discussing the alleged incident with your spouse?

Or, would you at this early stage of such an alleged attack choose to keep the attack private?

Unless the story is fiction.

Mr. Wright could not have placed his knee between her legs while, as one of the versions of her story was that she was standing against a counter, there would be no room for the defendant to place his hands on her crotch.

- Change this one fact and everything makes sense.

If Mr. Wright hadn't placed his knee between

her legs, it's perfectly reasonable for her to have followed the defendant to the door and let him out. Ms. Stampfli would not have been in fear of death nor injury. Then it's makes sense of her texting her colleague before calling police and her husband. Ms. Stampfli's actions speak far louder than her words, and they can tell you that no forcible compulsion occurred.

- Use your common sense -

Why did Ms. Stampfli have such a difficult time answering the prosecutors questions about Mr. Wrights knee?

(see RP 85)(line 2)

Q. And did Mr. Wright put his knee somewhere? you started to describe it but --

A. Just between, you know, it was an all at once, it happened really fast so it wasn't,

you know, it was all at once, his knee  
and the grab just --

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Q. And I just want to break it down a little bit. I understand it was all at once but just so we can get the details of each part of it. Where on your body was the knee of Mr. Wright?

A. Between my legs.

Q. Between your knees, your thighs, your calves; do you recall?

A. I do not recall.

- Mr. Wright did not place his knee between her legs if she can't recall to answer the question at line 12, RP 85.

The next question confirms it.

(see RP 85) (line 15)

Q. Was -- could you feel it pushing against you?

A. I could indeed.

- use your common sense -

When a reasonable persons brain sends the signal of pressure being applied on any part of the body, it also sends a signal of where the pressure is being applied. In other words, an exact location. The signal is simultaneous, the pressure, the location.

So how could a reasonable person not recall?

When Ms. Stampfli answered the question at RP 85, line 7, she answered with sureness... "between my legs".

Then when asked the next question at RP 85, line 12:

Q. Between your knees, your thighs, your calves; do you recall?

A. I do not recall.

- Use your common sense -

"I do not recall", would be an un-natural response. Especially when the previous question was answered with authority, "between my legs".

When reading the RP 73-94 there are numerous inconsistencies found in Ms. Stampfli's testimony.

By the defense counsel not disputing the facts in the states case it allowed the State to introduce fabricated evidence. The defendant did not agree to the facts, other than defense counsel's representation.

Had defense counsel thoroughly investigated allegations made by the alleged victim by way of police reports, the alleged victims written statement,

and recorded statement, prepared a solid defense, then effectively challenged the victims testimony through thorough cross-examination, inconsistencies in the alleged victims testimony would have been revealed to the jury to raise reasonable doubt.

One witness who happens to be the sole witness to an alleged crime, unless thoroughly challenged through cross-examination places the alleged victim and sole witness in the precarious position of having the ability to decide the outcome of the trial whether or not their testimony be the truth.

The Bible warns of the dangers of having only one witness to a crime. It can be found in the book of Deuteronomy Chapter 19 verse 15, it states:

"One witness shall not rise up against a man

for any iniquity, or for any sin that he sinneth; at the mouth of two witnesses or at the mouth of three witnesses, shall the matter be established.

Defense counsel failed to cross-examine one of the States witnesses, (see RP 59)(line 14)

Mr. Foley: I have no questions of this witness.

This gave the impression to the jury that the State had 3 "eyewitnesses" to an alleged crime.

If Mr. Foley would have asked each officer if they were present when an alleged crime occurred, the answer being "no", would have eliminated both officers as witnesses to an alleged crime.

SUPPLEMENT  
ON  
"THE KNEE"

28

?

? Question:

If Ms. Stampfli "could not" recall  
where "the knee" was placed -  
between her knees - between her  
thighs - or, between her calves...

Then, how  
can she be sure it was a "knee"?

IF SHE WAS SURE IT WAS A KNEE,  
LIKEWISE,

SHE WOULD BE ABSOLUTELY SURE WHERE A  
"K N E E" WAS PLACED

"THE ONLY POSSIBLE CONCLUSION YOU CAN  
REACH  
IS

THAT THE PROSECUTIONS CASE IS A  
FICTION."



James P. Foley # 20402 was appointed by Thurston County Superior Court on February 10<sup>th</sup>, 2016 to represent the defendant in case # 16-1-00211-34 State of Washington v. James O. Wright Jr.

Mr. Foley "treated his client as if he had been charged a minor infraction" instead of a CLASS A felony that could end in a "lifesentence"

Mr. Foley was the one person in the courtroom, who is professionally obligated to a sense of loyalty and advocacy. Mr. Foley, "without discussion with the defendant put together an incompetent defense plan that all but assured his clients conviction".

"Defense attorneys are supposed to be single-minded in their quest for acquittal by all ethical means. They are not allowed to have any other agenda. They cannot put patriotism, good citizenship,

religion, gender or racial solidarity, or commitment to any cause before the interests of their client. Nor is this radical notion."

- As a British barrister named Henry Brougham put it in 1820:

"An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, that client and none other. To save that client by all expedient means - to protect that client at all hazards and costs to all others, and among others to himself - is the highest and most unquestioned of his duties; and he must not regard a alarm, the suffering, the torment, the destructions he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his clients protection. To be anything else during a criminal

trial is to be guilty of serving two masters, which violates both the rules of the legal profession and the structures of the Bible.

"If counsel entirely fails to subject the prosecution's case to meaningful adversarial testing the adversarial process itself becomes presumptively unreliable".

This is the defendant's statement of additional grounds.

I pray that this commission, in the Court of Appeals carefully review, not only the VRP in its entirety, but also all police reports, written statements, recorded statements, clerks papers, the prosecutors opening argument (which defendant has not received a copy and may contain prosecutorial misconduct) regarding case no. 16-1-00211-34 Thurston County Superior Court, State of Washington v. James O. Wright Jr. and provide the following remedy.

I would also ask for the commission to investigate whether any motions were filed by defense counsel during pre-trial and during trial. I am not sure, but there is a possibility there was not a single motion filed until trial day when the motion for appeal was filed.

Also, take into consideration that counsel did not discuss the particular functions and responsibilities that the counsel and his client will share throughout the course of the trial. Counsel did not discuss with the client, in complete detail, the strategies to be employed during the trial, consider the defendant's desires and suggestion, and where ever practical and strategically sound, incorporate them into the defense theory. Take into consideration that defense counsel disengaged his client throughout all proceedings from pre-trial through trial and sentencing.

Even if the issues I present regarding the lessening of the States burden of proof to convict, the alleged victim and sole witness testifying that the defendant did not cause her to have sexual contact by forcible compulsion with the defendant, the judges striking of certain phrases from the jury instructions, defense counsel's rendering of ineffective assistance in failing to cross-examine the States sole witness and failing to conduct a presentence investigation into mitigating factors, the prosecution not meeting the statutory standard, or the prosecutor in his closing argument unfairly and inaccurately referring to testimony that the sole witness gave during direct examination (see RP 114) (line 20) is not enough to overturn my conviction, when com-

bined with the arguments and assignment of errors presented by defendants appellate attorneys in the opening brief demonstrates that cumulatively I was subjected to an unfair trial setting.

"The truth is like the sun".

James O. Wright Jr.

(Appellant)

"Each of the certain errors was significant and their cumulative impact on defendants trial was severe enough to warrant reversal of her conviction under the cumulative error doctrine."

# -REMEDY-

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As defendants appellate attorneys wrote in the opening brief:

## V. CONCLUSION

This matter should be dismissed with prejudice because Mr. Wright's constitutional right to a speedy trial was violated. This court should also find insufficient evidence was presented to support a verdict of guilt as to Indecent Liberties - Forcible Compulsion. Alternatively, this court should find that Wright was afforded ineffective assistance of counsel and remand the matter for a new trial.

THANK YOU.



## Additional Issues

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The prosecutor asks a total of 313 questions of the states 3 witnesses.

The prosecutor asks 148 questions of Tammy Stampfli, the alleged victim and sole witness to the alleged crime, 6 questions on redirect.

The prosecutor asks 91 questions of Officer Hendrich

The prosecutor asks 68 questions of Officer Nutter

— Compare to defense counsel's questions.

Defense counsel asks Tammy Stampfli 1 question.  
(see RP 95)

Defense counsel asks Officer Hindrich 0 questions  
(see RP 59)(line 14)

Defense counsel asks Officer Nutter 3 questions  
(see RP 71)(line 15)

Defense counsel asks a total of 4 questions of the 3 state witnesses.

State witnesses testimonies were filled with inconsistencies which defense counsel should have challenged but failed to do so. Counsel's ineffective assistance prejudiced the defendant and all but assured a conviction. This matter should be remanded for a new trial.



# Inconsistencies in police reports (supplement)

(36)

NOTICE: (See Officer Hindrich's police report)

Officer Hindrich's police report states:

"I advised Wright he was under arrest for "touching the pastor."

The time this report was made was 8:02 a.m. on 2/7/2016.

The evidence expands from "touching" to forcing a knee between her legs, indicating the prosecution's case is fiction.

Then Officer Hindrich writes... "I transported Wright to OPD for an interview. I read Wright his Miranda warnings..."

Yet, he stated in open court at RP 55, line 20 that he read Miranda at 4th & Adams...

Clearly inconsistent statements that defense counsel failed to challenge and in doing so, prejudiced the defendant thereby rendering ineffective assistance of counsel.



Paradventure, the information contained within this statement of additional grounds are true and correct, with the knowledge and experience you have in the legal profession and you were the criminal defendant with the same set of circumstances in a criminal proceeding, yet restricted from representing yourself or applying your knowledge and expertise to assist in your defense, would you feel comfortable and be satisfied with the same degree of representation that Mr. James Patrick Foley #20402 provided the defendant in the present case?

If your answer is "no", let justice then prevail.

Remand this matter for a new trial.



# CONCLUSION

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The alleged victim, Tammy L. Stampfli testified the defendant did not cause her to have sexual contact with the defendant.

The testimony of the alleged victim did not indicate that Wright used physical force which overcomes resistance pursuant to the Indecent Liberties Statute, since the contact occurred and ceased instantaneously.

The defendant was subjected to ineffective assistance of counsel whose errors were prejudicial and deprived the defendant to a fair trial, a trial whose result is reliable.

"Nothing in the record indicates that Wright personally agreed that he "did not dispute the facts" except for defense counsel's representation."

When defendant was denied effective assistance of counsel by ineffective cross-examination it reinforced the prosecution's case against the defendant.

Defense Counsel disengaged himself from his client throughout the course of representation.

Defense counsel's representation falls below an objective standard of reasonableness.

Defendant was subjected to an unfair trial setting.

## Additional Issues

40

Defense counsel rendered ineffective assistance failing to subpoena the alleged victims colleague that alleged victim stated she texted directly after the alleged crime occurred. (see RP 91, line 1)

Also rendering ineffective assistance failing to subpoena alleged victims husband who spent substantial time with investigating officers

Defense counsel had the opportunity to subpoena any one of the 60 people who were present. (see RP 93, line 22)

Defense counsel should have called the alleged victims colleague to testify as to whether or not the colleague influenced the alleged victim to invent a story and to what degree. Because the alleged victim testified

that she texted her colleague, however defense counsel did not challenge her testimony to establish what the text read. Also records from the alleged victims phone text messages should also have been subpoenaed.

Counsel's performance was deficient. (People v. Owens) (1989), 129 Ill. 2d 303, 309, 544 N.E. 2d 276, 278.) Defendant must also prove that his counsel's deficient performance substantially prejudiced his defense.

People v. Cross (1980), 84 Ill. App. 3d 868, 406 N.E. 2d 66.) Therefore, defendant maintains that counsel was mistaken in objecting to the instructions, and his conduct falls below the level of professionalism required. He also believes he was prejudiced by this conduct because, since the case is closely balanced, the jury might have chosen the "third option" and convicted him of the lesser charge, while acquitting him of the greater.

1 A. No.

2 Q. Or had any kind of contact?

3 A. None at all.

4 MR. JURIS: That's all the question I have.  
5 Thank you, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Cross-examination.

8 MR. FOLEY: Thank you.

9 CROSS-EXAMINATION

10 BY MR. FOLEY:

11 Q. Ms. Stampfli, I have one brief question and I know it  
12 may sound crazy but it's part of the law and I just  
13 want to know, did you on that Sunday have any sexual  
14 contact with Mr. Wright?

15 A. If him grabbing me from behind equates to sexual  
16 contact, I'd have to say yes.

17 Q. I'm talking about you. Did you have any sexual  
18 contact with him?

19 A. Meaning did I seek out sexual contact?

20 Q. Did you have any sexual contact? A yes or no  
21 question, ma'am.

22 A. No.

23 MR. FOLEY: Thank you. I have no further  
24 questions.

25 THE COURT: Any redirect?

1 MR. JURIS: Yes, Your Honor, thank you.

2 REDIRECT EXAMINATION

3 BY MR. JURIS:

4 Q. Just to clarify. Did you touch Mr. Wright in any  
5 way?

6 A. No.

7 Q. Did Mr. Wright touch you?

8 A. Yes.

9 Q. Did he touch you in an area of your body that you  
10 felt to have a sexual contact -- context? Excuse me.

11 A. Yes.

12 Q. And was that after or before the statements that had  
13 the sexual context?

14 A. After or before. After he said, "I want to eat your  
15 pussy?"

16 Q. Yeah.

17 A. It was after that, yes.

18 Q. Thank you.

19 A. Thank you.

20 THE COURT: Anything else on cross?

21 MR. FOLEY: No, Your Honor.

22 THE COURT: May this witness be excused?

23 MR. JURIS: Yes, Your Honor.

24 THE COURT: All right. You may step down.

25 You're free to leave the courtroom.

1 weight or value in finding the facts in this case.  
2 One is not necessarily more or less valuable than the  
3 other.

4 Instruction No. 5. The defendant is not required  
5 to testify. You may not use the fact that the  
6 defendant has not testified to infer guilt or to  
7 prejudice him in any way.

8 Instruction No. 6. A person commits the crime of  
9 indecent liberties when he knowingly causes another  
10 person who is not his spouse or registered domestic  
11 partner to have sexual contact with him by forcible  
12 compulsion.

13 Instruction No. 7. To convict the defendant of  
14 the crime of indecent liberties, each of the  
15 following elements of the crime must be proved beyond  
16 a reasonable doubt:

17 1. That on or about February 7, 2016, the  
18 defendant knowingly caused Tammy L. Stampfli to have  
19 sexual contact with the defendant;

20 2. That this sexual contact occurred by forcible  
21 compulsion;

22 3. That the defendant was not the spouse or  
23 registered domestic partner of Tammy L. Stampfli at  
24 the time of the sexual contact; and

25 4. That any of these acts occurred in the State

1 of each crime charged beyond a reasonable doubt. The  
2 defendant has no burden of proving that a reasonable  
3 doubt exists as to these elements.

4 A defendant is presumed innocent. This  
5 presumption continues throughout the entire trial  
6 unless during your deliberations you find it has been  
7 overcome by the evidence beyond a reasonable doubt.

8 A reasonable doubt is one for which a reason  
9 exists and may arise from the evidence or lack of  
10 evidence. It is such a doubt as would exist in the  
11 mind of a reasonable person after fully, fairly and  
12 carefully considering all of the evidence or lack of  
13 evidence. If from such consideration you have an  
14 abiding belief in the truth of the charge, you are  
15 satisfied beyond a reasonable doubt.

16 Instruction No. 4. The evidence that has been  
17 presented to you may be either direct or  
18 circumstantial. The term "direct evidence" refers to  
19 evidence that is given by a witness who has directly  
20 perceived something at issue in this case. The term  
21 "circumstantial evidence" refers to evidence from  
22 which, based on your common sense and experience, you  
23 may reasonably infer something that is at issue in  
24 this case. The law does not distinguish between  
25 direct and circumstantial evidence in terms of their

1 all, I'm looking at WPIC 34.03 the State proposed for  
2 forcible compulsion instruction. That has a last  
3 phrase of putting a person in fear of being kidnapped  
4 or another person would be kidnapped. I don't plan  
5 to include that phrase because I don't think that  
6 meets with the facts, at least as I understand them  
7 in this case.

8 MR. JURIS: Your Honor, from the State's  
9 perspective, I don't anticipate that to be part of or  
10 anything relevant to the testimony either.

11 THE COURT: So I'll be striking that out.

12 The next instruction, the knowingly instruction,  
13 and the last paragraph says that a person acts  
14 knowingly if the person acts intentionally. I don't  
15 plan to use that and I only plan to give a knowingly  
16 instruction, not an intentional instruction based on  
17 the elements of the crime.

18 MR. JURIS: And I have no objection or  
19 exception, and I'll put that on the record at the  
20 appropriate time, Your Honor. I was only following  
21 the notes in the WPIC when I put it together. I  
22 figured better to include it and not need it.

23 THE COURT: Okay. So strike out the intent  
24 instruction as well, which is the next one in the  
25 order that you handed them to me. The next

1 instruction is the married instruction, and if you'll  
2 notice the elements instruction does not even refer  
3 to the term "married." Let me look back.

4 The elements instruction for the crime of indecent  
5 liberties in this case says the defendant was not the  
6 spouse or registered domestic partner. I don't think  
7 we need the married instruction at all and it's  
8 simply confusing because normally an instruction  
9 defines a term that's used elsewhere. I don't think  
10 that we need to have an instruction about who is the  
11 spouse or a registered domestic partner, but if  
12 either counsel feel otherwise you can give me a  
13 proposed instruction in that regard. But I'm not  
14 planning on giving the married instruction.

15 Those are all the changes that I saw looking  
16 through the instructions, so tomorrow morning I'm  
17 going to start at nine with the jury. If I could  
18 have counsel here at ten minutes till nine in case  
19 there are any issues, and also if you have any  
20 supplemental instructions, either side, if you wish  
21 to have me consider those if you could give me those  
22 instructions tomorrow morning. I'm not going to  
23 anticipate how far we're going to get tomorrow but I  
24 think it is a possibility that we would go to the  
25 jury tomorrow. And so that's one of the reasons I

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(A recess was had.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: Everyone please be seated.

So, ladies and gentlemen of the jury, I did watch you line up. You did just great. But jurors tell me that after the first time they've done it it's all downhill from there because it's real easy from now on. You got it down.

As I told you, we're going to proceed with opening statement. I did not tell you but I should have, that the defense may give an opening statement at this time or may reserve that opening statement until a later stage of the trial. But at this time, if you would please give your attention to Mr. Juris, opening statement on behalf of the prosecution.

(Opening statement was presented by Mr. Juris.)

THE COURT: Thank you, Mr. Juris.

Mr. Foley, do you wish to give an opening statement at this time?

MR. FOLEY: Not at this time, Your Honor. We reserve our opening.

THE COURT: All right. The defense has chosen to reserve their opening statement to a later stage. That brings us to the end of the day as far as you

1 minutes, then.

2 I told the jury the clerk helps me out. He says I  
3 haven't memorialized the sidebars. Let me see if  
4 there's anything I need to memorialize formally.

5 MR. JURIS: During the peremptory challenges I  
6 suggested that we discuss scheduling for the  
7 afternoon. I guess technically that was a sidebar.

8 THE COURT: There was also a discussion at  
9 sidebar regarding Juror No. 3 and him having  
10 expressed to us that he didn't know if it was a  
11 felony but he lost his right to vote and possess  
12 firearms, and our discussion was if it was merely a  
13 malicious mischief gross misdemeanor domestic  
14 violence he would not have lost his firearm rights.  
15 I wish we had that question on the questionnaire and  
16 I need to discuss the fact that we don't. Mr. Foley  
17 had raised that issue in open court earlier about my  
18 asking that question. In any event, in the exercise  
19 of caution both counsel agreed that we should strike  
20 Juror No. 3 so I did so based on his answers in open  
21 court.

22 Anything else?

23 MR. JURIS: No, sir.

24 MR. FOLEY: No, sir.

25 THE COURT: Thank you.

1 him, it was on purpose. Whether he knew that it was  
2 a crime or not, according to this instruction and  
3 according to the law that you've been given, does not  
4 matter. What we're talking about is the actual act  
5 of putting his knee behind her leg and reaching  
6 around and grabbing, as she described, her crotch.  
7 That's what he was aware he was doing, aware of that  
8 fact, aware of that result of the actual contact.

9 "Caused Tammy L. Stampfli to have sexual contact  
10 with the defendant." And sexual contact is in  
11 Instruction No. 8. "Sexual contact" means any  
12 touching of the sexual or other intimate parts of a  
13 person done for the purpose of gratifying sexual  
14 desires of either party.

15 So the way it's worded, causes Tammy L. Stampfli  
16 to have sexual contact with the defendant. I would  
17 submit to you that doesn't say he forced her to grab  
18 him. The example I used with Ms. Stampfli was you're  
19 standing in a crowd, you're shoulder to shoulder with  
20 someone, you're having physical contact with them,  
21 someone bumps into you, you're actually having  
22 physical contact with the person you bumped into, it  
23 was their action that caused it. So that's the  
24 physical contact.

25 "Sexual or other intimate parts." You heard

1 defendant guilty. So first, "On or about February  
2 7th, 2016." No question about the date. Everyone  
3 testified to the date. The officers testified about  
4 it, Pastor Stampfli talks about it being a Sunday, it  
5 was right before she was getting ready for the first  
6 service in the morning.

7 "The defendant knowingly caused Tammy L. Stampfli  
8 to have sexual contact with the defendant." You have  
9 probably gathered from hearing these instructions  
10 that words you thought you might have understood what  
11 they meant, knowingly, sexual contact, we still go  
12 ahead and give you have definitions for. So  
13 knowingly is Instruction No. 10. The defendant, Mr.  
14 Wright, knowingly, "person knows or acts knowingly or  
15 with knowledge with respect to a fact, circumstance  
16 or result when he or she is aware of that fact,  
17 circumstance or result. It is not necessary that the  
18 person knows that the fact, circumstance or result is  
19 defined by law as being unlawful or an element of a  
20 crime."

21 Kind of convoluted, kind of confusing, basically  
22 acts knowingly or with knowledge to a fact,  
23 circumstance or result, aware of that fact,  
24 circumstance. He was aware he was touching her. He  
25 didn't trip, he didn't stumble, she didn't bump into

1 is the law. Now, you've heard that Mr. Wright is  
2 charged with indecent liberties by forcible  
3 compulsion and you're given a jury instruction, in  
4 fact several, 6, 7 and 8, describing exactly what  
5 that crime is. But if you recall the officer's  
6 testimony, Officer Henrichs came to an assault clear  
7 case. He believed it was an assault he was  
8 responding to. Officer Nutter was dispatched to an  
9 assault, and perhaps clearly an assault occurred here  
10 but that's a different crime than what is being  
11 charged. The charge here is indecent liberties by  
12 forcible compulsion. And by that they mean in that  
13 Instruction No. 7 that Mr. Wright caused Tammy  
14 Stampfli to do something, and I would submit he did  
15 not. He might have done something and it's a  
16 horrible thing he did, but he did not cause her to do  
17 something and those are essential elements of the  
18 crime of indecent liberties with forcible compulsion.

19 Now, I'd also ask you to read the jury  
20 instructions very carefully. You have taken an oath  
21 saying that you would listen to the judge and to read  
22 them, look very carefully and to Instruction No. 3,  
23 that's the presumption of innocence and reasonable  
24 doubt, and it also tells that you the State has the  
25 burden of proving each and every element. And I'm

1 not standing here in front of you saying something  
2 horrible didn't happen on February 7th. I'm just  
3 saying the State charged the wrong crime because they  
4 haven't proved the elements of this crime.

5 Thank you very much.

6 THE COURT: Ladies and gentlemen, as I pointed  
7 out, the State has the last word.

8 Your rebuttal argument, Mr. Juris.

9 MR. JURIS: Thank you, Your Honor. So, you've  
10 just been told that the facts aren't in question. So  
11 now you know that everything you heard you can take  
12 that as the facts of the case, as the evidence.  
13 You're being asked to make a decision on the law and  
14 you are being asked to split an incredibly fine hair.  
15 What does the instructions say? "The defendant  
16 knowingly caused Tammy L. Stampfli to have sexual  
17 contact with the defendant." Not hearing anything  
18 about anything else except caused her to have contact  
19 with the defendant, that's the hair you're being  
20 asked to split. So ask yourself a question. If  
21 someone pushes you, do you have physical contact with  
22 them? They're touching you. Isn't that what  
23 physical contact is? Who caused it? The other  
24 person caused you to have physical contact with them.  
25 Not -- this is not saying -- the instruction, I would

1 A. Just the pressure of his body.

2 Q. And did Mr. Wright put his knee somewhere? You  
3 started to describe it but --

4 A. Just between, you know, it was an all at once. It  
5 happened really fast so it wasn't, you know, it was  
6 all at once, his knee and the grab just --

7 Q. And I just want to break it down a little bit. I  
8 understand it was all at once but just so we can get  
9 the details of each part of it. Where on your body  
10 was the knee of Mr. Wright?

11 A. Between my legs.

12 Q. Between your knees, your thighs, your calves; do you  
13 recall?

14 A. I do not recall.

15 Q. Was -- could you feel it pushing against you?

16 A. I could indeed.

17 Q. From what you recall, did it feel like just a -- like  
18 lean against or actually pushing against you? Do you  
19 understand what I'm trying to say?

20 A. I'm not sure there's a lot of difference between  
21 leaning and pushing, but it was very frightening.

22 Q. Could you actually feel pressure?

23 A. Absolutely.

24 Q. Sometimes you're standing in a crowd and your  
25 shoulders touch someone.

1 A. It was not that.

2 Q. And so then when Mr. Wright used his hands, was it  
3 one hand or two?

4 A. Both hands.

5 Q. Did they come from the same side or different sides?

6 A. Around me. Different sides I guess.

7 Q. Do you recall, was it around your waist, around your  
8 shoulders?

9 A. Around towards -- hands towards the crotch, so I  
10 really don't want to restage this, so I don't know  
11 where arms are.

12 Q. And that's understandable. If you recall, were his  
13 hands open or closed?

14 A. I do not recall.

15 Q. Now, sounds like you're kind of describing a  
16 hug-from-behind-type action; is that accurate?

17 A. Yeah, but the hands were not up here, that kind of  
18 hug from behind.

19 Q. And I know you said this is not something you want to  
20 relive, but we do need to be specific.

21 A. Relive is fine, but reenactment, I can't tell you  
22 exactly where.

23 Q. His hands, where exactly were they?

24 A. On my crotch.

25 Q. And I hate to ask it this bluntly, was that over your

1 THE COURT: Exhibit No. 1 will be admitted.

2 (State's Exhibit No. 1 was admitted.)

3 BY MR. JURIS:

4 Q. So, Officer, after documenting the defendant, getting  
5 the photograph, finding the underwear, what next did  
6 you do in this investigation, if anything?

7 A. Booked him into the Thurston County Jail.

8 Q. And was that the end of your investigation at that  
9 point?

10 A. Yes.

11 MR. JURIS: I don't have any other questions.  
12 Thank you.

13 THE COURT: Mr. Foley, cross-examination?

14 MR. FOLEY: I have no questions of this  
15 witness.

16 THE COURT: All right. May this witness be  
17 excused?

18 MR. JURIS: Yes, Your Honor.

19 THE COURT: You may step down. You're free to  
20 go. Thank you.

21 Please call your next witness.

22 MR. JURIS: Yes, Your Honor. The State would  
23 call Officer Shelby Nutter.

24 THE COURT: Please raise your right hand.

25 SHELBY NUTTER a witness herein, having been  
duly sworn, was examined

1 and testified as follows:

2 DIRECT EXAMINATION

3 THE COURT: Please be seated here. Adjust the  
4 chair and other microphone as you need.

5 BY MR. JURIS:

6 Q. Officer, can you please state your name and spell  
7 your Lacey last name for the record.

8 A. Officer Shelby Nutter, N-u-t-t-e-r.

9 Q. And what is your occupation?

10 A. I'm a police officer with the City of Olympia.

11 Q. And how long have you been in law enforcement?

12 A. For 13 years.

13 Q. And how much of that time with the City of Olympia?

14 A. The entire time.

15 Q. As an Olympia police officer, what are your duties  
16 and responsibilities?

17 A. I patrol the streets. I have a district that I'm  
18 responsible for. I handle emergency calls, 911, and  
19 I proactively look for crime as well.

20 Q. Were you employed in that capacity on February 7 of  
21 2016?

22 A. I was.

23 Q. And were you on duty that day?

24 A. I was.

25 Q. What shift were you working?

1 satisfy his sexual desire, I would submit to you.

2 Sexual contact occurred by forcible compulsion.  
3 Forcible compulsion is No. 9. Forcible compulsion  
4 means any physical force that overcomes resistance --  
5 it's two parts. Overcomes resistance. Comes up  
6 behind her, knee to the back of the leg as she's  
7 leaning against the countertop, arms around, she said  
8 pulls her in. Yes, it only lasted for a moment she  
9 said. There's nothing in here that says how long it  
10 has to last. She couldn't go forward, she couldn't  
11 run, she couldn't go to the side, his arms were  
12 around her. She started flailing, as she described  
13 it, throwing her arms around, screaming. Doesn't say  
14 it has to overcome physical resistance for a  
15 prolonged period. Doesn't say it has to overcome it  
16 in a certain way, has to overcome a push or it has to  
17 overcome running, which I would submit to you could  
18 be physical resistance. Just that it overcomes it,  
19 and that's the facts you have.

20 He pins her up against the railing and wraps his  
21 arms around her to the point and pulls her in until  
22 she has to start flailing. But even more than that,  
23 the second part is, or and you can determine for  
24 yourselves if it could be either one of these, but I  
25 would submit to you they're both there, or a threat

1 Pastor Stampfli describe where he touched her. It  
2 wasn't the pelvis, it wasn't the hips, it was on her  
3 crotch. There's nothing in there that says it has to  
4 be skin to skin, there's nothing this there that said  
5 it had to be under the clothing, just that it was  
6 that area and you heard the testimony to that.

7 "It was done for the gratification of sexual  
8 desires of either party." It's pretty clear, I would  
9 submit from the testimony, that it wasn't done for  
10 Pastor Stampfli's gratification or sexual desires.  
11 So how do we know it was done for the defendant's?  
12 Well, first, why else would you grab someone there?  
13 You're not grabbing them on the hips, you're not  
14 grabbing them on the shoulder, you're not grabbing  
15 them on the elbows, but more than that was what he  
16 said, not at that time but just a moment before. Why  
17 was he there? Now to get in he said that he was cold  
18 and he wanted a cup of coffee.

19 But when they got to the fireside room, why did  
20 the defendant tell Pastor Stampfli he was there? "I  
21 want to or I'm going to or I'm here to eat your  
22 pussy." Vulgar, yes. Graphic, yes. Sexual? I  
23 would submit to you, yes. And then just a moment  
24 later, grabs her in the exact spot that he was  
25 talking about. That's how we know it was done to

1 Q. At any point as the case officer, did you or anyone  
2 else investigating this case, to the best of your  
3 knowledge, locate James Wright?  
4 A. Yes. Officer Nutter did.  
5 Q. Do you recall when that was?  
6 A. About twelve o'clock in the afternoon.  
7 Q. What happened at that point?  
8 A. I responded to the location and placed Mr. Wright  
9 under arrest.  
10 Q. At what location was that?  
11 A. 4th and Adams, I believe.  
12 Q. How far is that from United Churches?  
13 A. About seven, eight blocks.  
14 Q. When you were in contact with Mr. Wright, did you  
15 inform him of why you were making contact?  
16 A. Yes.  
17 Q. Did he make any response to that?  
18 A. He made one.  
19 Q. What did he say?  
20 A. He -- when I read him Miranda and asked him about  
21 being at the church, he said he was at the church but  
22 he didn't touch her.  
23 Q. At that point had you already given him specifics of  
24 what you were investigating?  
25 A. Yes.

1 Q. Did he say or make any other comments about if there  
2 were -- or any statements to you about the incident?

3 A. Mr. Wright asked me what if he said she touched him.

4 Q. So the person that you made contact that day, do you  
5 see him in the courtroom?

6 A. Yes.

7 Q. Can you describe what he's wearing?

8 A. Seated at the defense table. Got a beard now.

9 Q. Does his appearance look different than when you made  
10 contact with him?

11 A. Yes.

12 Q. How so?

13 A. He's got a beard now. His hair has grown out.

14 Q. Any question to you that it's the same individual?

15 A. No.

16 Q. Did you do or any officer that you know of do  
17 anything to document Mr. Wright's appearance at the  
18 time?

19 A. I photographed Mr. Wright.

20 MR. JURIS: If I may approach, Your Honor?

21 THE COURT: You may.

22 Q. I'm going to happened you what's been marked as State  
23 No. 1. Do you recognize that?

24 A. Yes.

25 Q. And what is that?

1 coming, to pull it together, so I thought I would  
2 start by texting my colleague who has worked with him  
3 more than I, and she immediately called and said call  
4 the police, and which I did, and then I called my  
5 husband. So they all came and we talked about this  
6 and --

7 Q. When you say "they all?"

8 A. The police, the police and my husband.

9 Q. Who got there first, if you remember?

10 A. I believe the police.

11 Q. Okay. So you say you all talked about this. How  
12 long did that go on?

13 A. Not a long time because I had a service at nine and  
14 one at 10:30, so I didn't know, you know what, I  
15 didn't know to call the police. I was glad the  
16 friend said call the police, but then, yeah, I had to  
17 just sort of power through. So the police said, "We  
18 can come back later and finish talking about what you  
19 want to do."

20 Q. Did that happen?

21 A. They did come back. So Mr. Wright came back at the  
22 end of the first service, and --

23 Q. Let me -- let me stop you there. Let's just talk  
24 about the police and I'll get to Mr. Wright.

25 A. They came back later, yes.

1 Q. About how much later, do you recall?

2 A. After the second service. My husband said they came  
3 back during the second service, but I didn't speak to  
4 them.

5 Q. And the second service is at what time?

6 A. At 10:30.

7 Q. So did you speak to one, two, officers?

8 A. I spoke to two officers the first time and then I  
9 spoke to Officer Nutter after the second service.

10 Q. And did you, after you pushed Mr. Wright out of the  
11 church -- well first of all, let me ask you this.  
12 From when you first answered the door to when you got  
13 him out of the church, how long, roughly, did that  
14 whole interaction last?

15 A. I have no idea.

16 Q. Are we talking a half an hour, are we talking a few  
17 minutes, if you had to estimate?

18 A. I don't know.

19 Q. Okay. So after you got him out of the church, did  
20 you see him again that day?

21 A. So at the end of the second service, he was -- had  
22 returned and was standing by the coffee table.

23 Q. Did you personally see Mr. Wright?

24 A. I personally saw him.

25 Q. Did you approach him?

1 A. I did not approach him.

2 Q. Did he approach you?

3 A. He did not because a couple gentlemen from the

4 congregation escorted him out.

5 Q. Was that at your request?

6 A. I didn't say anything but I did look at them.

7 Q. Was Mr. --

8 A. They sprung into action.

9 Q. Was his dress the same as when you'd seen him earlier

10 in the morning?

11 A. He was dressed exactly the same.

12 Q. When you saw Mr. Wright after the second service --

13 A. The first service.

14 Q. Excuse me, I'm sorry, the first service, about how

15 far away were you?

16 A. About as far as we are right now.

17 Q. So I don't want to put words in your mouth, maybe 30

18 feet, is that about accurate?

19 A. I think so.

20 Q. Okay. How crowded was it in that area when you saw

21 Mr. Wright after the first service?

22 A. About 60 people.

23 Q. You had a clear line of sight to Mr. Wright?

24 A. Yes.

25 Q. Did he see you, if you know?

1 A. I have no idea. I assume so.

2 Q. Did you make eye contact?

3 A. Not that I remember.

4 Q. Do you recall what he was doing?

5 A. Standing by the coffee table.

6 Q. If you saw, did you see him interacting with anyone?

7 A. He was just standing there. The service had not  
8 quite ended.

9 Q. So after the second service, you talked to Officer  
10 Nutter. About how long did that last?

11 A. A half hour, maybe. I had written a statement  
12 because they wanted a statement, so I had written a  
13 statement and then I went over the statement with her  
14 and she told me that he was in custody.

15 Q. Did you have any -- at any point during this you  
16 indicated you didn't call the police right away, you  
17 talked to your friend and your husband. Did you have  
18 any hesitation about notifying law enforcement?

19 A. Well, I think I obviously hesitated when I just  
20 didn't do it right away, but once someone said you  
21 should do that, I did it, yeah.

22 Q. Check my notes real quick.

23 So after talking with Officer Nutter, after the  
24 second service, had you seen the defendant again  
25 until today?

1 don't believe there is any criminal history that  
2 would apply in this case. I've provided that to  
3 defense counsel and I'm handing that forward after he  
4 and his client has signed off on that.

5 THE COURT: Okay. So the standard range,  
6 according to the worksheet, is 51 to 68 months with  
7 an offender score of zero?

8 MS. WINDER: And that would be to life, Your  
9 Honor, as this indecent liberties with forcible  
10 compulsion is subject to lifetime supervision  
11 pursuant to RCW 9.94A.507.

12 THE COURT: All right. You want to make your  
13 arguments to me?

14 MS. WINDER: Your Honor, at this time, the  
15 State is making recommendations. The State's  
16 recommendation is for the high end of the standard  
17 range, which is 68 months to life. The State's  
18 recommendation is based on the fact that the  
19 defendant has not taken any responsibility for his  
20 behavior, that this happened to a woman that was an  
21 acquaintance of his, and that his response to that  
22 was to blame the victim. The State's recommendation  
23 also would be for lifetime community custody, for a  
24 sexual assault protection order protecting the victim  
25 for a period of the defendant's life, the defendant

1 not have any contact with the victim or her church, a  
2 sexual deviancy evaluation and any follow-up  
3 treatment as required, mandatory DNA testing, HIV  
4 testing as required, no criminal law violations, and  
5 comply with all the recommendations found in  
6 Appendix H of the Presentence Investigation. Again,  
7 Your Honor, this is based on all the things that I  
8 have enunciated. I don't have any further  
9 information for the Court unless the Court has  
10 questions.

11 THE COURT: I don't have questions. I recall  
12 the testimony --

13 MS. WINDER: Thank you, Your Honor.

14 THE COURT: -- in this particular case.

15 Mr. Foley?

16 MR. FOLEY: Yes, Your Honor. We'd ask the  
17 Court to consider going to the low end of the  
18 standard range to 51 months. The court heard the  
19 testimony. Mr. Wright has no prior felony history.  
20 He lived 61 years without having any kind of felony  
21 behavior. This was clearly an aberration on his  
22 part. I'm not sure what came into his mind that day,  
23 but I point out at one point the State had made an  
24 offer of two months in jail and credit for time  
25 served. Mr. Wright refused that offer, but this and

1 the nature of the crime of indecent liberties with  
2 forcible compulsion, I believe this, after hearing  
3 the testimony, merits the low end which is 51 months.  
4 Thank you, Your Honor.

5 THE COURT: Mr. Wright, you have the  
6 opportunity to speak before I sentence you. Is there  
7 anything you wish to say?

8 THE DEFENDANT: I repent, sir.

9 THE COURT: Mr. Wright, as I mentioned a  
10 moment ago, I recall the testimony in this particular  
11 case. I don't understand how all this came about.  
12 Based upon your previous behaviors, this was totally  
13 unexpected and out of character. You had had  
14 interaction with this particular woman on previous  
15 occasions. How and why this happened, however, is  
16 not really the issue before me. A jury found that it  
17 did take place, that what you did was truly indecent  
18 liberties. We heard from the victim as she testified  
19 and I have in the Presentence Investigation report a  
20 short paragraph about her concerns, that while this  
21 has affected the way that -- she's less trusting than  
22 in the past, she's also received support from her  
23 church and others that she appreciates.

24 The legislature has seen fit to set a standard  
25 range in this case which is substantial, 51 to 68

1 months. I'm going to impose a 60-month sentence  
2 which is mid-range. You will receive credit for the  
3 time that you've already served. You will be on  
4 supervision for a period of life. I'm issuing a  
5 no-contact order which would exist from this point  
6 forward. You are never to have contact with the  
7 victim in this case or with her church or any church  
8 that she might be serving as a pastor in. \$500 crime  
9 victim assessment, \$200 filing fee, \$100 DNA fee are  
10 also required. Based on this conviction, you may not  
11 at any time in the future possess, own or have under  
12 your control a firearm at any time unless that right  
13 is restored by a court of record, and do you  
14 understand that?

15 THE DEFENDANT: I do.

16 THE COURT: There are at Appendix H of the  
17 Presentence Investigation report a proposed set of  
18 community placement or community custody  
19 requirements. I did not hear any specific arguments  
20 about any of those. It does appear that they would  
21 be appropriate, so I'm directing that Appendix H be  
22 attached and incorporated as a part of the judgment  
23 and sentence in this case.

24 Are there any other matters that I need to  
25 address?

## REPORTING OFFICER NARRATIVE

Olympia Police Department

OCA
2016-00930
Date / Time Reported Sun 02/07/2016 08:02

Victim

STAMPFLI, TAMMY L

Offense

SEX OFFENSE/FONDLING, INDECENT

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

On 02-07-2016 at 0802 hrs, I was dispatched to an assault clear at the United Churches (110 11th Ave SE). I contacted the Pastor, Tammy Stampfli.

Stampfli advised around 0740 hrs, a transient male she shows as James Wright came to the side door on the west of the church. Stampfli advised she knows James from him attending church services. James advised he was cold and asked to come in. Stampfli stated he was wearing baggie jeans, no shirt with a zebra colored vest on.

Stampfli allowed James to enter the church and shortly after James said " I want to eat your pussy ". Stampfli advised she told James that was inappropriate. Stampfli stated she turned around to make coffee and James came up behind her and placed his knee between her legs and reached around and placed his hands on her crotch. Stampfli said she started screaming for James to leave and he did. See her attached written statement along with taped statement which Officer Nutter later received.

Stampfli advised she know James has been staying at the Drexel house. I advised OPD units of James Wright current clothing description and Officer Nutter responded to Drexel house to check if he was staying there. They advised he was living there and they would call when they see him.

At around 1055 hrs, I was recontacted by Stampfli husband at the church who stated Wright had returned to the church and was escorted from the property. Units checked the area to attempt to locate Wright.

At 1152 hrs, Officer Nutter advised she had located Wright at the corner of 4th and Adams. I advised Wright he was under arrest for touching the pastor. Wright said " I didn't touch her ". I transported Wright to OPD for an interview. I read Wright his Miranda warnings and he stated he understood and would not sign the form. Wright continued talking. When I asked Wright about being at the church he would say he went into one church this morning but he did not touch her. Wright then asked " what if I say she touched me ?".

Based on previous interactions with Wright I could see Wright was not willing to talk about the incident and was playing games. I ended the interview.

Sgt Herbig made contact with Prosecutor Mark Thompson and explained him the details of the case. Mark Thompson found there was PC for Wrights arrest for Indecent Liberties with Forcible compulsion.

I transported Wright to TCSO and booked him in for one count of Indecent Liberties.

I photographed Wright at TCSO to show his clothing description at time of arrest. I recovered Wright cheetah print vest and later placed it into evidence at OPD. At the time of booking Wright was also not wearing underwear and had his underwear in his right vest pocket.

I certify (declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct (RCW 9A.72.085). I am entering my authorized user ID and password to authenticate it.



1 front of me on my crotch. I pushed him away and screamed at him to stop it and get out  
2 right now. I kept screaming at him to get out as I followed him to the door. He went out  
3 and I made sure that the door was latched and secure. And then I called my husband  
4 and I talked to a friend who suggested that I call the police.

5 Q Tammy, have you noticed a change in his behavior lately?

6 A Well, I think that he, um, I, as I think about the last couple of weeks, I feel like he's just  
7 been really... strangely fixated on me and in a way that he, um, you know, tries, like he  
8 said he wanted me to be his mom. He wanted to start calling me mom. And then I said  
9 no, he could call me Tammy or his pastor. And then he, the next week said he felt like  
10 he had a calling to be a pastor and he asked if he could... we could spend time together,  
11 so I could teach him how to be a pastor. And I just kind of sidestepped that. And then I  
12 was, um, meeting with another parishioner last Sunday after church at Wagner's for  
13 lunch, and he came and stood in the window and waved his arms and legs and, um,  
14 then eventually he came in and bought a coffee and a cookie and sat at the... the table  
15 right next to ours. And then we packed up our lunch and left and came back to the  
16 church. Um, so... yeah, I feel... feel like it's, his behavior's been... something I keep an  
17 eye on.

18 Q How long has James been coming to this church?

19 A I would say about four months.

20 Q Is there anything else you'd like to add to this statement?

21 A I think that covers it.

22 Q All right. The date is February si-, correction, February 7<sup>th</sup>, 2016 and the time is 1307  
23 hours.  
24

25  
26 [End of Transcript]

27 SKN: LTS/LP

28 REVIEWED BY: Nutter, S. #2668  
29



CASE SUPPLEMENTAL REPORT

Printed: 02/08/2016 08:57

Olympia Police Department

OCA: 201600930

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: CLEARED BY ARREST

Case Mng Status: NA

Occurred: 02/07/2016

Offense: SEX OFFENSE/FONDLING, INDECENT LIBERTIES, CHILD MOLESTING

Investigator: NUTTER, S. (2668)

Date / Time: 02/07/2016 13:37:14, Sunday

Supervisor: HERBIG, J. (2858)

Supervisor Review Date / Time: 02/07/2016 14:52:47, Sunday

Contact:

Reference: Follow Up

On 02/07/16 at 0809 hrs., Dispatch advised local patrols of an assault which took place approximately 20 minutes ago at the United Churches, located at 110 11th Ave SE. The reporting party, later identified as Tammy Leiter Stampfli, informed Dispatch that James Wright grabbed her from behind and made sexual comments towards her. Dispatch reported Stampfli was very upset.

Officer Hinrichs and I arrived on scene at 0821 hrs. Stampfli was waiting for us upon our arrival. We entered the church and Stampfli escorted us to the office area. Stampfli explained Wright is a member of the church. She said she was alone in the church this morning when Wright knocked on the office door. Stampfli told us Wright said he was cold and he asked to come in. She said she told Wright he could come in but she had work to do. Stampfli reported Wright asked her for a cup of coffee. She stated while she was walking to the coffee maker Wright said, "I want to eat your pussy." Stampfli reported she scolded Wright and told him he couldn't talk to her that way. She said she started making coffee when Wright came up behind her and grabbed her crotch. Stampfli said she yelled at Wright and ordered him to leave. She told me Wright left and was last seen wearing only a zebra print vest and low sagging pants.

Stampfli was visibly shaken. Throughout the entire time Stampfli was talking she was fighting to hold back tears. She repeatedly blotted her eyes to keep her tears from falling. Stampfli apologized as she told us she felt like she was making a big deal out of something. I told Stampfli what she was reporting is a big deal and she wasn't over reacting whatsoever.

Stampfli is 5'4" tall and 130 pounds. She was wearing a cropped blazer, a knit mid-thigh length dress, and tights. Wright is 6'00" and 170 pounds.

Stampfli asked us if she could take some time to prepare for services before continuing with the police report. She informed us she would be done with services around noon. We left the church and started searching the area for Wright.

I located Wright standing on the southeast corner of 4th Ave., and Adams St. Officer Hinrichs responded to my location and we took Wright into custody. Wright was only wearing a leopard print fur vest, sagging pants, and tan colored boots. I saw Wright wasn't wearing any underwear, as his pants were hanging low in front exposing his lower abdomen. I also noticed Wright had a pair of white underwear in his vest pocket. Officer Hinrichs took custody of Wright.

I contacted Stampfli at the United Churches at approximately 1250 hrs. Stampfli provided me with her type written statement. (See attached) I asked Stampfli if she was willing to provide a taped statement. Stampfli agreed and provided a taped statement.

I placed the statement into evidence at OPD. I also requested the statement be transcribed.

Investigator Signature

Supervisor Signature



February 7, 2016

I was seated at my desk in the office of the United Churches preparing for the upcoming worship services. The office door bell rang at about 7:40 and I got up to answer it. I could see that James Wright was outside. I know James because he has been attending Sunday morning services for months. I opened the door and James came in and said that he was cold and wanted some coffee. I told him that I would make some coffee, but that I had work to do and couldn't visit with him. I noted that he was wearing low-riding pants, no shirt and a leopard print fur vest. I asked him if he was going to put on a shirt for church as we walked down the hall. I got out the supplies to make coffee and James said to me: "I want to eat your pussy." I told him that talking to me that way was not appropriate and that he could not talk to me that way ever again. He said this across the kitchen counter, then he moved to another place in the room. I was focused on putting the coffee into the coffee filter and was surprised when James came up behind me and pushed his knee between my legs and his hand around front of me on my crotch. I pushed him away and screamed at him to stop and get out right now. I kept screaming at him to get out as I followed him to the door. He went out and I make sure the door was latched and secure.

Then I called my husband, and talked with a friend who suggested that I call the police.

*Sammy A Stamp*



**STATE'S RECOMMENDATION ON PLEA OF GUILTY  
BASED ON ORIGINAL INFORMATION  
State v. JAMES OTIS WRIGHT, JR 16-1-00211-34**

**Current Charge(s):** INDECENT LIBERTIES FELONY (BY FORCIBLE COMPULSION)

**Standard range for these offenses is 51-68 months**

**PLEA:** Plead guilty to Felony Harassment and Assault 4 with Sexual Motivation  
Standard Range 1-3 months for Count I, 0-364 days for Count II

**INCARCERATION: 2 months**

Washington State Department of Corrections (DOC)

Thurston County Jail

Defendant is required by law to remain in custody pending sentencing. See RCW 10.64.025(2).

A PSI is required for all sex offenses. See, RCW 9.94.110

**FINANCIAL OBLIGATIONS:**

\$200 Court Costs, \$100 DNA Fee, \$500 Crime Victim Compensation Fund, and Court appointed counsel fees as ordered (Also, DV fee if charged as DV offense)

RESTITUTION for medical expenses or ongoing counseling related to this offense

**COMMUNITY SUPERVISION/PLACEMENT/CUSTODY: 12 months**

NO CONTACT WITH VICTIM FOR 5 Years

No criminal law violations;

Obey all rules of D.O.C.

No contact w/ minor children ;

No Possession or Consumption of Controlled Substances unless by Lawful Prescription, and random urinalysis as required by CCO

Drug abuse/ Alcohol abuse evaluation and treatment as ordered by CCO

Mental Health treatment as ordered by CCO;

Sexual Deviancy Evaluation and any recommended treatment;

Mandatory Polygraph as required by CCO to monitor compliance with sentence;

Not possess or peruse any sexually explicit material as defined by therapist/CCO:

Mandatory HIV Test;

Comply W/ Mandatory Sex Offender Registration

Mandatory DNA Testing:

Living conditions to be approved by CCO

Geographical Restrictions as ordered by CCO

**Offer extended on: 4/1/16.**

***Note: All offers subject to revision and/or revocation without notice. Offer may be revoked without further notice if defendant fails to appear for any hearing(s) or trial.***

DPA: CEJ



DECLARATION OF MAILING

GR 3.1

FILED  
COURT OF APPEALS  
DIVISION II  
2017 JAN 30 AM 11:19  
STATE OF WASHINGTON

I, James O. Wright Jr. on the below date, placed in the U.S. Mail, postage prepaid, 2 envelope(s) addressed to the below listed individual(s):

BY \_\_\_\_\_  
DEPUTY

Court of Appeals  
Division II  
950 Broadway #300  
M/S TB-06  
Attn: David Byrne  
Tacoma, WA 98402-  
4454

Penoyar Law Offices  
P.O. Box 425  
South Bond, WA 98586

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. RAP 10.10 Statement of Additional Grounds
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 26 day of January, 2017, at Connell WA.

Signature \_\_\_\_\_



