

FILED  
Court of Appeals  
Division II  
State of Washington  
7/5/2018 11:59 AM  
NO. 50455-3-II

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

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STATE OF WASHINGTON,  
Respondent,

v.

JOHN ARTHUR PETERSON,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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THE HONORABLE THOMAS COPLAND, JUDGE

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BRIEF OF RESPONDENT

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## **RESPONSE TO ASSIGNMENTS OF ERROR**

- 1. The court did not abuse its discretion in admitting the Defendant's text messages and Craigslist ad.**

### **RESPONDENT'S COUNTER STATEMENT OF THE CASE**

On August 24, 2016, Officer Robert Raveica, an enforcement officer with the Washington State Liquor and Cannabis Board, was searching the website Craigslist.org for ads that offer to sell illicit cigarettes. RP 97-98.

Officer Raveica came across an ad offering to sell four cartons of cigarettes. The cigarettes did not have Washington tax stamps on them, or a tax stamp of any other U.S. state, but rather stickers and a Moldovan seal containing Romanian writing, leading Officer Raveica to investigate further. RP 98; RP 110-111.

Officer Raveica received texts confirming availability of the cigarettes, and a time, place, and price for three cases of Camels and one Case of Russian brand cigarettes was arranged. RP 101-105.

During the conversation, the Defendant indicated to Officer Raveica that the Defendant's friend could ship more cigarettes from overseas should Officer Raveica be interested in purchasing more. RP 108.

Upon arriving at the agreed upon address, approximately 7 hours after the initial contact with the Defendant, Officer Raveica saw an individual, later identified as the Defendant, walking down the street with a black backpack, and identified himself as the buyer. RP 106-107.

Defendant then proceeded to unzip his backpack and produce the cigarettes as described in the ad, at which point Officer Raveica gave Defendant the agreed upon amount of cash. RP 107.

After the transaction was completed, Officer Horne arrived on the scene and Officer Raveica identified himself as "an LCB officer with the Liquor and Cannabis Board" and informed the defendant that "selling cigarettes without a license was a crime." RP 108.

Defendant was then detained and the cigarettes were seized and photographed. RP 108-109.

Defendant was not licensed to sell the cigarettes. RP 143-144.

### **ARGUMENT**

- 1. The court did not abuse its discretion in admitting the Defendant's text messages to Officer Raveica and the Defendant's Craigslist ad.**

In the case at hand, the trial court acted in a reasonable manner by admitting the evidence of the ad and text messages to trial. Prior to the

hearing, Judge Copeland determined that a reasonable trier of fact could find that the text messages came from Mr. Peterson, and that the text messages and craigslist ad were not offered as truth of the matter asserted and were therefore admissible in court. RP 87-90.

**Standard of review for abuse of discretion.**

A decision of a trial court will not be reversed unless it is found to be an abuse of discretion. The Supreme Court has adopted the rule that "an abuse of discretion occurs only when the decision or order of the court is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons'." *State v. Cunningham*, 90 Wn.2d 32, 34, 633 P.2d 886, 888 (1981). (Quoting *State v. Blight*, supra 89 Wn.2d 38, 41, 569 P.2d 1129 (1997).) An abuse of discretion "exists" only where it can be said no reasonable man would take the view adopted by the trial court." *Id.* (quoting *Blight* at 41.)

**The Defendant's Craigslist ad and his text messages are not hearsay because they are the statement of a party opponent.**

A statement is not hearsay if it is (1) a prior statement by a witness, or (2) an admission by a party opponent. ER 801(d).

The ad and text messages offered by the prosecution are not hearsay as they are statements by a party opponent, a servant, agent, or a co-conspirator. Under ER 801(d)(2), a statement is allowed where it is

made either by the defendant or a person in a representative capacity to the defendant.

The defendant arrived at the agreed upon place, with the agreed upon cigarettes and willingly took the money offered by Officer Raveica. All of these arrangements were made prior to the meeting via text message and were adhered to during the transaction. Judge Copeland found, prior to trial, that a finder of fact could determine that the statements in the text messages were attributable to the defendant and that the finder of fact may use other evidence to make that determination. RP 89. Because of this, the text messages and the ad which the phone number came from are not hearsay as they are presented as a statement by party opponent.

**Even assuming that there was error, it was harmless.**

Even assuming, arguendo, that the admitted statements were hearsay, any error is harmless because the entirety of the elements of the crime were fulfilled by the personal interaction between the officer and the Defendant.

An error is harmless if, “from the record in a given case, it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Jackson*, 192 Wash. App. 1072 (2016) (Quoting *Brown*, supra 147 Wash.2d at 332, 58 P.3d 889 (2002)).

In *Thompson*, a case where text messages were admitted as evidence when a defendant's phone was found to have had conversations with an unknown party seeking drugs, the court ruled that because, even without the text messages, there was substantial evidence of guilt, an abuse of discretion would have been harmless. *United States v. Thompson*, 335 Fed.Appx. 431 (5th Cir. 2009). The prosecution in *Thompson* brought in a witness who had spent the day with Mr. Thompson and had observed his drug dealing. *Id.* The court determined that with the witness testimony and the other evidence offered by prosecution, the absence of the text messages would not have had an effect on the outcome of the case. *Id.* This case is like Peterson's, as the text messages and ad only offer an explanation to the trier of fact of how Officer Raveica came to be at the location where the crime occurred. There is already an overwhelming amount of evidence through the officer testimony. Further, there is no evidence from the record that indicated the outcome of the case would have been different without the admission of the ad and text messages.

**The Defendant's Craigslist ad and his text messages are not hearsay because it was not offered for the truth of the matter asserted.**

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c).

In Mr. Peterson's case, the text messages and Craigslist ad are not hearsay, as they were not offered as a means of proving the truth of the matter asserted, but rather to explain to the trier of fact "how Officer Raveica came in to contact with the defendant and ended up purchasing the cigarettes." RP 86-87.

In the State of Washington,

No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter, or providing consumers with access to a commercial cigarette-making machine without a license under this chapter. A violation of this section is a class C felony.

RCW 82.24.500.

Mr. Peterson appeared at the scene of the crime, and upon Officer Raveica identifying himself as the buyer, Defendant retrieved the cigarettes from his backpack and proceeded to give them to Officer Raveica, accepting money in exchange. This transaction in itself satisfies the elements required to convict Mr. Peterson.

In *State v. Moses*, the court held that the prosecution was allowed to present evidence of a victim's testimony so long as the statements were offered for the non-hearsay purpose of explaining why the social worker

had called CPS. *State v. Moses*, 129 Wn. App. 718, 724, 119 P.3d 906 (2005). This is similar to Mr. Peterson's case, as the prosecution offered the officer's testimony of the ad as a means of explaining why the officer had contacted Mr. Peterson and explain to the trier of fact how Officer Raveica came to be at the location where the crime occurred and not for the purpose of proving the elements of the crime.

Defendant cites *In re Jovan A.*, an Illinois case in which evidence of an ad which was used to prove an element of a crime was found to be inadmissible. *In re Jovan A.*, 6N.E.3d 760, 767, 379 Ill. Dec. 432 (1<sup>st</sup> Dist. Ill. App., 2014). This case differs from Peterson's as the evidence of the Craigslist ad in Peterson was not used as evidence to prove the truth of the matter asserted. In *In re Jovan A.*, the prosecution used evidence of the ad as means to prove that the defendant intended to permanently deprive the victim of her bike, which was an element of the crime the defendant had been charged with. *Id.* The court had ruled that they would allow the evidence of the ad through testimony as a way of describing the process by which the officers conducted the investigation, just not as evidence of the crime. *Id.* In Peterson, the evidence of the ad and text messages were used in the officer's description of their investigation, not as a means by

which to prove an element of the crime. Therefore, the evidence of the ad and text messages are not hearsay and are admissible in court.

### **CONCLUSION**

The trial court did not abuse its discretion in admitting the text messages and ad to evidence.

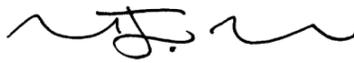
The evidence admitted to the court was not hearsay as it was not offered to prove the matter at hand.

There was no harm caused by the admission of the evidence.

For the reasons stated above, the State respectfully asks that the appeal be denied on all grounds and the Court affirm the decision of the Jury and the sentence imposed by the trial court.

DATED this \_\_\_\_\_ day of July, 2018.

Respectfully Submitted,

BY:   
\_\_\_\_\_  
JASON F. WALKER  
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JFW / jfw

# GRAYS HARBOR PROSECUTING ATTORNEY

July 05, 2018 - 11:59 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50455-3  
**Appellate Court Case Title:** State of Washington, Respondent v. John Peterson, Appellant  
**Superior Court Case Number:** 16-1-00482-5

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