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State of Washington  
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NO. 50622-0-II

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

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STATE OF WASHINGTON, Respondent

v.

JOSHUA EARL HARRIS, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-00133-5

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BRIEF OF RESPONDENT

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## **RESPONSE TO ASSIGNMENTS OF ERROR**

- I. The evidence was sufficient to support Harris' conviction for Attempted Rape of a Child in the Third Degree.**
- II. Harris' due process right to a fair trial was not violated.**

### **STATEMENT OF THE CASE**

Joshua Harris (hereafter "Harris") was charged by information with Communicating with a Minor for Immoral Purposes, Attempted Rape of a Child in the Third Degree, and Possession of a Controlled Substance – Methamphetamine for an incident occurring in Clark County, Washington on January 12 and 13, 2016. CP 184-85. Harris was convicted of all three counts after a jury trial.

Vancouver Police Detective Robert Givens was a detective with the Vancouver Police digital evidence cybercrime unit (hereafter "DECU"). RP 350. Detective Givens began an investigation to identify people who were using the internet as a means to have sexual relations with minors. RP 360. Detective Givens posted a personal advertisement on Craigslist that said "skipping school today want to chat W4M Vancouver. You want to chat with me? I'm pretty mellow. Send me a message. I'll be around gaming and chatting. ♥" RP 360-362. W4M meant that it was a post from a woman looking for a man. RP 362. Harris, a 36 year old man,

responded to the message around 40 minutes after it was posted. RP 362, 394. Detective Givens and Harris then communicated through the Craigslist email system and through text messages, with Detective Givens posing as Julie Delores Vincent. RP 363-64, 366. "Julie" was a non-existent 14 year old girl created for this investigation. RP 366-67, 395.

Harris was told by "Julie" that she was 14 years old, and she asked Harris if that was okay. RP 367. Harris responded that it was okay. RP 367. Detective Givens sent Harris a photo of "Julie," but the photo was actually of another police officer who was over the age of 21. RP 371-72. In reply to receiving this photo, Harris told "Julie" "wow, you don't look 14," and "if you want an older caring man's attention, I will gladly give it to you." RP 375. Harris then made graphic statements detailing the sex acts he wanted to do to this 14 year old girl, discussing that he "wanted to taste her," he "sexually ached for her," and he "wanted to fuck her." RP 376, 378, 380. He also described in very graphic detail how he would perform oral sex on "Julie." RP 378. He further said "I am not a pedo, but I have always wanted to be with a young woman and taste that delicious peach," "I really shouldn't say such things, but God damn you're fine," and "I don't like how our society stats [*sic*] that teenagers can't have sex. Bullshit." RP 376-78.

Harris was asked by Detective Givens if he wanted to meet “Julie” and he responded “yes, please.” RP 377. Harris wanted to initially pick “Julie” up immediately, but ultimately a plan was made to meet at a Starbucks in Vancouver. RP 377, 379-81. Once Harris was at the Starbucks, Harris texted “Julie” that he was waiting for her and that he’s going to “make this the best you’ve had.” RP 384. Detective Givens was sitting in the Starbucks using a laptop to communicate with Harris, and he saw Harris with a phone respond to the messages. RP 385-87. Once Detective Givens told Harris that “Julie” was still walking there, Harris left the Starbucks and was arrested outside. RP 387.

Harris was transported to the Vancouver police west precinct where he was interviewed. RP 387. When Harris’ vehicle was transported to the police station, a condom was found on the floor outside of the driver’s door of Harris’ vehicle in a secured area of the police station. RP 347, 354. A box of condoms was also found in Harris’ pocket at the time he was arrested. RP 349-50, 395.

During the interview, after being read his constitutional rights, Harris is asked why he is there and he said “I, ah, I fucked up last night.” *See Exhibit 2, pg. 3.* Harris said he had been chatting with “Julie” who told him she was 14 years old. *See Exhibit 2, pg. 10-11.* When shown the

photo of “Julie” Harris said that is girl he knew as Julie. *See* Exhibit 2, pg. 22. A majority of the interview was played to the jury at trial. RP 389.

The jury returned guilty verdicts on all three counts. RP 518-19; CP 262-64. Harris was sentenced to a standard range. CP 300-30. This timely appeal followed.

## ARGUMENT

### **I. There was sufficient evidence to support Harris’ conviction for Attempted Rape of a Child in the Third Degree.**

Harris argues the State did not present sufficient evidence to support his conviction for Attempted Rape of a Child in the Third Degree because there was insufficient evidence of his intent to commit the crime of rape of a child and insufficient evidence that he took a substantial step towards the commission of the crime. However, the evidence presented at trial overwhelmingly proved Harris’ guilt beyond a reasonable doubt. His conviction should be affirmed.

To determine whether sufficient evidence supports a conviction, this Court determines whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt based on the evidence presented at trial. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of the evidence, this

Court views all the evidence in the light most favorable to the State, and draws all reasonable inferences in the State's favor and interpret them most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977); *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). This Court also defers to the trier of fact on any issues of conflicting testimony, credibility of witnesses and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). Credibility determinations are not subject to review on appeal. *Thomas*, 150 Wn.2d at 874. Further, "[i]t makes no difference whether the evidence is direct, circumstantial, or a combination of the two, so long as the evidence is sufficient to convince a jury of the defendant's guilt beyond a reasonable doubt." *State v. Wilson*, 158 Wn. App. 305, 316-17, 242 P.3d 19 (2010) (citing *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999)).

In this case, the State charged Harris with Attempted Rape of a Child in the Third Degree, alleging Harris took a substantial step towards the commission of the crime of Rape of a Child in the Third Degree, with the intent to commit that crime. CP 1-2; RCW 9A.28.020(1); RCW 9A.44.079. A substantial step is conduct which strongly indicates a

criminal purpose and which is more than mere preparation. *State v. Aumick*, 126 Wn.2d 422, 427, 894 P.2d 1325 (1995).

Harris argues that the evidence was insufficient to prove that he intended to have sexual intercourse with a minor and that he did not take a substantial step towards committing the crime. Harris' primary argument is that, because the photo sent to him by law enforcement purporting to be the child he was communicating with was actually a photo of an adult, he only intended to have sexual intercourse with that adult and thus lacked the intent to rape a child. However, the fact that the photo sent to Harris was of an adult does not negate the evidence presented at trial that showed Harris believed the person in that photo was 14 years old, intended to have sexual intercourse with that 14-year-old, and took a substantial step towards the commission of that act. The evidence proved that Harris had the intent to commit the crime of Attempted Rape of a Child in the Third Degree.

The victim's age in an attempted child rape charge (either the child victim's actual age or the defendant's belief in a fictitious victim's age) is material to proving a defendant's specific intent to commit the crime of attempted child rape. *State v. Johnson*, 173 Wn.2d 895, 908, 270 P.3d 591 (2012). The State is required to prove the age of the child that the defendant intended to have sexual intercourse with, and the method of

proving that age will depend on whether the victim is an actual or fictitious child. *Id.* To prove the age of a fictitious child victim, the State must show the defendant knew the perceived victim's age. *Id.* The method of proving that the defendant knew the victim's age is usually done by proving that the perceived victim communicated her age and that the defendant received it. *Id.*

The evidence presented against Harris shows that he believed the person he was communicating with was 14, and that he intended to have sexual intercourse with this fictitious 14-yearold. He was told by "Julie" that she was 14 years old, and she asked Harris if that was okay. RP 367. Harris responded that it was okay. RP 367. This alone shows that he believed he was interacting with a 14-year-old. Harris' continued conversations further reinforced his belief that "Julie" was a child. Harris told "Julie" "wow, you don't look 14," and "if you want an older caring man's attention, I will gladly give it to you." RP 375. He also made graphic statements detailing the sex acts he wanted to do to this 14-year-old girl, discussing that he "wanted to taste her," he "sexually ached for her," and he "wanted to fuck her." RP 376, 378, 380. He also described in very graphic detail how he would perform oral sex on "Julie." RP 378. He further acknowledged that he knew what he wanted to do to this 14-year-old child was wrong when he said "I am not a pedo, but I have always

wanted to be with a young woman and taste that delicious peach,” “I really shouldn’t say such things, but God damn you’re fine,” and “I don’t like how our society stats [*sic*] that teenagers can’t have sex. Bullshit.” RP 376-78. After he was arrested, Harris’ intent to have sex with this 14-year-old was further proven when he said “I, ah, I fucked up last night” and that he had been chatting with “Julie” who told him she was 14 years old. *See* Exhibit 2, pg. 3, 10-11. Harris’ intent was clear throughout his communication: he wanted to have sex with 14-year-old “Julie.”

When the evidence is viewed in the light most favorable to the State, the evidence established that Harris intended to have sexual contact with a 14-year-old child. If the most common way to prove that a defendant knows a child victim’s age is through the victim communicating their age and the defendant receiving it, Harris went far beyond that when he explicitly acknowledged wanting to have sex with someone that was 14. *Johnson*, 173 Wn.2d at 908. The evidence showed that Harris believed “Julie” was 14 and that he intended to have sexual contact with her. Therefore, the evidence was sufficient to support his conviction for Attempted Rape of a Child in the Third Degree.

Harris’ reliance on *State v. Patel*, 170 Wn.2d 476, 242 P.3d 856 (2010), for the argument that because the person in the photo was an adult it shows he did not intend to have sex with a child is sorely misplaced. In

dictum from a plurality opinion, the Court in *Patel* stated that “a defendant who attempts to have sex with a person he believes is underage but is actually an adult may not be convicted...” *Id.* at 485. It is this dictum from *Patel* that Harris almost exclusively relies upon, and it is this dictum that the Court explicitly rejected in *Johnson*. The Court in *Johnson* held that this nonbinding dictum was unnecessary to resolving *Patel*, was only agreed upon by four justices, and was actually rejected by five justices. 173 Wn.2d at 904. The Court went so far as to rule that “[w]e now disapprove the *Patel* dictum...” and reiterated that to convict a defendant the State needs to prove that a defendant is aware that of the victim’s age, real or fictitious. *Id.* at 904, 908.

It is a misstatement of the law for Harris to argue that he cannot be found guilty for attempting to have sex with a person he thought was 14 but was actually an adult. The issue in an attempted child rape case is the defendant’s specific intent, namely whether the defendant believes the child he is communicating with is a minor and if he intends to have sex with that child. The type of photo used by a law enforcement officer does not change that intent if the defendant believes he is communicating with someone he believes is a child. That Harris thought the photo of an adult was actually 14 year old still shows that he thought “Julie” was 14 and he was trying to have sexual contact with that 14 year old. The evidence

established that Harris possessed that intent and sufficient evidence supported his conviction.

Harris also argues that the State failed to prove that he took a substantial step towards completing the crime of rape of a child, because he only took the step of meeting a woman who was an adult in a photo. Preparation for a criminal act is not sufficient to satisfy the requirement of a “substantial step” in a prosecution for attempt. *State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002) (citing *State v. Workman*, 90 Wn.2d 443, 449-50, 584 P.2d 382 (1978)). A substantial step is conduct that is “strongly corroborative of the defendant’s criminal purpose.” *Workman*, 90 Wn.2d at 451 (quoting Model Penal Code sec. 5.01(1)(c) (Proposed Official Draft, 1962)). The determination of whether a defendant’s conduct constitutes a “substantial step” towards the commission of the crime is a question of fact for the trier of fact to decide. *Id.* at 449. Importantly, any act done in furtherance of the crime constitutes an attempt if it clearly shows the design of the defendant to commit the crime.” *Wilson*, 158 Wn. App. at 317 (citing *State v. Nicholson*, 77 Wn.2d 415, 420, 463 P.2d 633 (1969)).

Harris relies upon *Townsend* to support his argument that he was attempting to meet an adult woman for sex and therefore did not take a substantial step towards committing the crime of rape of a child. However,

the facts of *Townsend* are almost identical to the facts of Harris' case, and Detective Givens' use of an adult's photo as a stand in for "Julie" is a distinction without a difference. In *Townsend*, the defendant was communicating online with a police detective posing as a 13-year-old girl named "Amber." 147 Wn.2d at 670. The defendant told "Amber" he wanted to have sex with her and to not tell anyone about their communications. *Id.* at 670-71. The defendant was arrested when he tried to meet "Amber" for sex and was charged with Attempted Rape of a Child in the Second Degree. *Id.* at 671. On appeal, the defendant argued that because he was communicating with a fictitious child he could never have taken a substantial step towards completing the crime of attempted child rape. *Id.* at 679. The Court rejected this argument and held that it "makes no difference that Mr. Townsend could not have completed the crime because 'Amber' did not exist. He is guilty... if he *intended* to have sexual intercourse with her." *Id.* (internal quotations omitted).

Harris took a substantial step towards raping a child when he went to the Starbucks to have sex with "Julie." He brought condoms with him, and he texted "Julie" from the Starbucks that he would "make this the best you've had." RP 349-50, 384. The evidence presented at trial showed he intended to have sex with "Julie" who he believed was 14. Just as with "Amber" in *Townsend*, the fact that "Julie" did not exist did not change

Harris' intent to have sexual intercourse with "Julie." 147 Wn.2d at 679. The evidence does not support Harris' argument that he intended to have sexual intercourse with an adult since the person in the photo sent to him by Detective Givens was a photo of an actual adult. Harris believed the person in the photo was "Julie," so the photo could have been of any person and as long as Harris believed it was "Julie" his intent would not change. Therefore, he possessed the intent to have sexual contact with a fictitious child, just as the defendant did in *Townsend*. Substantial evidence supports his conviction.

Harris also argues that he did not take a substantial step towards the commission of the crime, because he left the Starbucks when "Julie" was not there, thus abandoning his plan to have sexual intercourse with her. However, "[a]ny slight act done in furtherance of a crime constitutes an attempt if it clearly shows the design of the individual to commit the crime." *State v. Sivins*, 138 Wn. App. 52, 64, 155 P.3d 982 (2007) (quoting *State v. Price*, 103 Wn. App. 845, 852, 14 P.3d 841 (2000)). This shows that a *slight act*, in furtherance of the commission of child rape, can be sufficient to constitute a substantial step towards the commission of that crime. Here, Harris' graphic communications with "Julie," his attempt to meet her at the Starbucks with a box of condoms, and his communication with "Julie" at the Starbucks all show he took an act in

furtherance of committing the crime of Attempted Rape of a Child in the Second Degree.

When the evidence is viewed in the light most favorable to the State, it clearly established that Harris had the intent to have sexual intercourse with the child he believed was 14 years old. The evidence showed that he took a substantial step with the intent to have sexual contact with a child. This shows he had the intent to commit the crime of Rape of a Child in the Third Degree, and substantial evidence supports his conviction for attempting to commit that crime.

A conviction will be reversed for insufficient evidence only if *no* rational trier of fact could find all the elements established beyond a reasonable doubt. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998). Clearly a rational trier of fact could, and in fact did, find all the elements of Attempted Rape of a Child in the Third Degree were proven in Harris' case. The State presented sufficient evidence to persuade a rational trier of fact of the truth of the allegations. Harris' conviction should be affirmed.

**II. Harris' due process right to a fair trial was not violated.**

Harris argues that his due process right to a fair trial was violated by Detective Givens for failing to adhere to the Internet Crimes against

Children (hereafter “ICAC”) standards. Harris argues that Detective Givens was required to follow these standards because they are binding federal law, but that he failed to follow them. However, the ICAC standards are not binding on Washington law enforcement officers, and even if they were, Detective Givens did not violate the standards. Furthermore, Detective Givens did not engage in outrageous conduct warranting a dismissal. Harris was not deprived of his right to a fair trial and his claim fails.

The ICAC standards are part of a national strategy for child exploitation prevention and interdiction, but the standards are not federal rules or laws that state agencies are bound to follow. 34 U.S.C.A. § 21111(a). The national strategy did create a national ICAC task force program made up of “State and local law enforcement task forces dedicated to developing effective responses to online enticement of children by sexual predators...” 34 U.S.C.A. § 21112(a)(1). One of the purposes of these task forces is to conduct proactive and reactive investigation into internet crimes against children. 34 U.S.C.A. § 21113(2). Local task forces that are part of the national program shall “establish or adopt investigative and prosecution standards, consistent with established norms, to which such task force[s] shall comply.” 34 U.S.C.A. § 21114(7).

Contrary to Harris' argument that to violate any ICAC standard is to violate federal law, the act creating the ICAC standards does not mandate local task forces to adopt any federal laws. The act simply says that local task forces are to adopt standards "consistent with established norms." 34 U.S.C.A. § 21114(7). This is a far cry from the standards being "mandated by federal law" as Harris argues. *See* Appellant's Brief, pg. 18. Furthermore, the State is unaware of any Washington statute or case that has adopted the ICAC standards as part of Washington law, and found none after a diligent search. Therefore, any alleged violation of ICAC standards by Detective Givens is not a violation of federal law and does not support a due process violation claim.

Harris argues that *U.S. v. Caceres*, 440 U.S. 741, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979), supports the proposition that a violation of the ICAC standards is a violation of his due process rights. However, the ICAC standards are not binding federal law, and *Caceres* does not hold that an agency failing to follow a federal law is violating due process. In *Caceres*, an IRS agent recorded conversations with the defendant, but the agent did not follow the IRS regulations for recording conversations. *Id.* at 744-49. The Court found that no federal statute or constitutional provision required the IRS agent to follow the agency regulation, so there was no due process violation. *Id.* at 749-50. The Court held that a "court's duty to enforce an

agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law.” *Id.* at 749. For this holding, the Court relied on *Bridges v. Wixon*, 326 U.S. 135, 152–153, 65 S.Ct. 1443, 89 L.Ed. 2103 (1945), where a deportation order was held invalid when Immigration Service rules were not followed, because the “rules were designed ‘to afford the alien due process of law’ by providing ‘safeguards against essentially unfair procedures.’” *Id.* This shows the Court did not hold that an agency violating federal law is automatically violating due process. What the ruling in *Caceres* actually shows is that if a regulation intended to provide someone with due process of law, a violation of that regulation would be a violation of due process rights.

In Harris’ case, he has failed to show that the ICAC standards were created with the intent to afford suspects with due process of the law. The intent behind the creation of ICAC task forces was to create a uniform national strategy to combat online child predation. The requirements for local task forces laid out in 34 U.S.C.A. § 21114 show no intent that the standards were intended to provide suspects with due process of law. Therefore, even if Detective Givens did not follow the ICAC standards it would not violate Harris’ right to due process.

Detective Givens’ investigation of Harris did not violate any ICAC standards, nor did he commit any misconduct, let alone misconduct rising

to the level of a due process violation. The specific ICAC standards adopted by the Vancouver Police Department state that: "[m]embers should make every reasonable effort to comply with these Standards. However, since many aspects of [i]nvestigations are dynamic and laws vary widely between jurisdictions... it is difficult to anticipate every circumstance that might present itself." CP 164. The standards acknowledge that there is no one correct way to conduct an investigation into online child predators, and allow for "reasonable deviations from these Standards" depending on various factors. CP 164. This shows that Detective Givens was under no requirement to strictly follow the ICAC standards.

Detective Givens did not violate the ICAC standards when he used a photo of a female police over the age of 18. The standards in regards to the use of photos mandate that the photos shall only be of an employee that has given their consent and was over the age of 18 at the time of consent. CP 171. The standards do not require that the photo of said employee be of them as a minor, because "the depictions themselves *may* be of that [e]mployee under the age of 18." CP 171 (emphasis added). This shows that Detective Givens properly followed the guidelines when he sent a photo of an adult police employee to Harris. This action did not deprive Harris of his right to a fair trial.

Detective Givens also did not violate the ICAC standards when he communicated with Harris as "Julie." During online communications, absent prosecutorial input to the contrary, officers are required to allow the suspect to "set the tone, pace, and subject matter" of the conversation. CP 172. However, that requirement does not stop the officer from posting information, placing advertisements or posts, or sending messages. CP 172. This shows that an officer can be proactive in their investigation and reach out and communicate with a suspect. This is exactly what Detective Givens did here when he posted an advertisement as "Julie" and communicated with Harris. The evidence shows that it was Harris who set the tone of the conversation and made it explicitly sexual. When Harris is shown the photo of "Julie" he responded "wow, you don't look 14," and "if you want an older caring man's attention, I will gladly give it to you." RP 375. In response, Detective Givens asked "what kind of attention?" RP 375. From there Harris described graphic sex acts he wanted to perform on this 14 year old child, with the only "prompting" from Detective Givens being "tell me about the other stuff first", "for real or just online," and "do you want to try and meet?" RP 376-77. The conversation clearly shows Harris making the communications sexual, and Detective Givens actions did not violate any ICAC standards.

Harris also argues that Detective Givens engaged in "outrageous conduct" to the extent it violated his due process right to a fair trial. *See* Appellant's Brief, pg. 19. However, Detective Givens' actions were not outrageous and did not violate Harris' due process right to a fair trial. Outrageous conduct by police can violate due process if the conduct is so shocking that it violates fundamental fairness. *State v. Lively*, 130 Wn.2d 1, 19-20, 921 P.2d 1035 (1996) (internal citations omitted). There must be more than a demonstration of flagrant police conduct to support a due process violation. *Id.* at 20 (citing *State v. Myers*, 102 Wn.2d 548, 551, 689 P.2d 38 (1984)). "Dismissal based on outrageous conduct is reserved for only the most egregious circumstances" and "it is not to be invoked each time government acts deceptively." *Lively*, 130 Wn.2d at 20 (internal quotations omitted).

In reviewing an outrageous government conduct claim, this Court should evaluate the conduct under the totality of the circumstances. *Id.* at 21. Evaluating a case on its particular facts requires evaluating the police conduct while keeping in mind "proper law enforcement objectives- the prevention of crime and the apprehension of violators, rather than the encouragement of and participation in sheer lawlessness." *Id.* (internal quotations omitted). There are several factors to consider in determining whether police conduct violates due process: (1) did the police conduct

instigate a crime or merely infiltrate an ongoing crime; (2) was the defendant's reluctance to commit a crime overcome by "pleas of sympathy, promises of excessive profits, or persistent solicitation;" (3) did the government control the criminal activity or simply allow it to occur; (4) was the police motive to prevent crime or protect the public; and (5) was the government conduct itself a crime or conduct "repugnant to a sense of justice." *Lively*, 130 Wn.2d at 22 (internal citations omitted).

When evaluating the totality of the circumstances, Detective Givens' conduct was not outrageous and did not violate Harris' right to due process. The nature of online investigations for child predators requires law enforcement to be proactive, because of the relative anonymity and ease with which an adult can prey on a child online. This is reflected in the ICAC standards and in the actions taken by Detective Givens. Detective Givens did initiate the contact with Harris by posting the advertisement on Craigslist, but this can be characterized as lawful police deception and not one of the most "egregious circumstances" of misconduct. *Id.* at 20. Furthermore, Detective Givens may have initiated the contact with Harris, but it was Harris' actions that made the contact criminal because Detective Givens posing as a 14-year-old girl and chatting online is not a crime. Harris' attempt to have sex with a 14-year-old is a crime.

After the initial advertisement, what, if any, reluctance Harris had to commit the crime of raping a child was not overcome by Detective Givens engaging in "pleas of sympathy, promises of excessive profits, or persistent solicitation." *Id.* at 22. Detective Givens did nothing of the sort, and merely asked Harris what kind of attention he wanted to give "Julie" and if they could meet. RP 357-. There were no persistent pleas of any kind and Detective Givens barely had to communicate with Harris before Harris launched into graphic details of what he would do to "Julie." Furthermore, the motive of Detective Givens was clear: to protect the public by preventing crimes against children from taking place or beginning online. Detective Givens initiated his investigation to identify people who were using the internet as a means to have sexual relations with minors. RP 360. There is no evidence whatsoever that Detective Givens' intent was to create crimes to prosecute. What Detective Givens' stated purpose and actions show is that he was proactively searching for people who prey on children online. This is proper police conduct and is not outrageous.

Furthermore, Detective Givens did not do anything that constituted a crime and his actions were not "repugnant to a sense of justice." *Lively*, 130 Wn.2d at 22. Detective Givens' actions were consistent with the ICAC standards and with actions taken by police officers in other online

"sting" cases. Officers often begin these cases by posting an online advertisement, communicating with the suspect about sex, and then arranging a meeting. *See Wilson*, 158 Wn. App. 305; *Townsend*, 147 Wn.2d 666<sup>1</sup>. This is exactly what Detective Givens did when he posted the advertisement, told Harris "Julie" was 14, asked Harris what he wanted to do, and then asked to meet. These actions were not illegal nor repugnant to a sense of justice.

Harris has failed to show that Detective Givens violated any provision of the ICAC standards or did anything so shocking that it violated fundamental fairness. Under the totality of the circumstances Detective Givens' actions were reasonable, restrained, and necessary when considering the type of investigation he was pursuing. Harris' due process right to a fair trial was not violated. His claim fails.

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<sup>1</sup> While claims of outrageous police conduct were not raised in these cases, the respective Courts did not find anything wrong or egregious with the officers' actions, and the respective convictions were all upheld.

**CONCLUSION**

The State respectfully asks this Court to affirm Harris' convictions.

DATED this 12 day of March, 2018.

Respectfully submitted:

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## Transmittal Information

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