

FILED
Court of Appeals
Division II
State of Washington
1/3/2020 4:20 PM
NO. 53253-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

JASON SPAULDING,

Appellant.

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

REPLY BRIEF OF APPELLANT

Peter B. Tiller, WSBA No. 20835
Of Attorneys for Appellant

The Tiller Law Firm
Corner of Rock and Pine
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

TABLE OF CONTENTS

	<u>Page</u>
<u>Table of Authorities</u>	
A. ARGUMENT IN REPLY	1
1. K.M. and Spaulding decided that K.M. would move into Spaulding’s house. Substantial evidence shows an established relationship and connection between Spaulding and K.M.	1
B. CONCLUSION	7

TABLE OF AUTHORITIES

<u>WASHINGTON CASES</u>	<u>Page</u>
<i>State v. Landsiedel</i> , 165 Wn. App. 886, 269 P.3d 347 (2012).....	2
<i>State v. Pratt</i> , No. 51777-9-II, 2019 WL 6872518 (December 17, 2019)	3,4,5
<i>State v. Willhoite</i> , 165 Wn. App. 911, 268 P.3d 994 (2012).....	2
<u>REVISED CODE OF WASHINGTON</u>	<u>Page</u>
RCW 9.94A.670.....	2,6

A. ARGUMENT IN REPLY

1. **K.M. and Spaulding decided that K.M. would move into Spaulding's house. Substantial evidence shows an established relationship and connection between Spaulding and K.M.**

At issue is Jason Spaulding's eligibility for a disposition under the special sex offender sentencing alternative (SSOSA). The statute states in relevant part:

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense.

....

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime

RCW 9.94A.670.

In its response, the State argues that the record supports the sentencing court's determination that there is not an adequately established relationship which would make Spaulding an appropriate candidate for SSOSA. Brief of Respondent at 13.

Exceedingly few Washington cases have discussed the meaning of the statutory phrase "established relationship or connection." Two cases, both discussed in the appellant's opening brief, present an inapposite factual situation to the present case. *In State v. Landsiedel*, 165 Wn. App.

886, 269 P.3d 347 (2012), the defendant was charged with attempted rape of a child in the second degree, and communicating with a minor for immoral purposes as a result of a police “sting” operation involving an internet chat room. 165 Wn. App. at 888. The “minor” in the chat room was a police officer posing as a thirteen year old female. *Id.* The defendant argued that his friends and wife were “victims” of the offense because their relationship had suffered harm as a result of his internet misuse, and since he had an “established relationship” with his wife, he qualified for SSOSA. 165 Wn.App. at 891. The state agreed he had an “established relationship” but argued his wife was not a “victim” of this particular crime. *Id.* Division One agreed, reasoning that “victim” in this context was limited to the person against whom the crime was committed, even if that was a fictitious person. 165 Wn.App. at 893.

Division One also addressed “established relationship” or “connection” in *State v. Willhoite*, 165 Wn. App. 911, 268 P.3d 994 (2012), which involved a prosecution for possession of child pornography. 165 Wn.App. at 912-13. Willhoite had no relationship of any kind with any of the children depicted in the electronic images stored on his computer. *Id.* Willhoite argued in the trial court that there were no “victims” for his offense since there was nothing in the record about harm suffered by any of the children depicted in the images. *Id.* at 913. The trial court granted the

SSOSA disposition, and the State appealed. Division One reversed the sentence, reasoning that since the record established that Willhoite had no relationship of any kind with any of the children depicted in the images, he did not meet the statutory “relationship or connection” condition. *Id.* at 915.

Neither of these cases furnishes much guidance in reviewing the trial court's determination that Spaulding had an “established relationship or connection” to K.M., since in neither case was there an actual victim with whom to have a relationship or connection and it was not disputed the defendants had not met any alleged victim in the flesh.

This Court, however, has recently shed light on the meaning of “established relationship and connection” in *State v. Pratt*, No. 51777-9-II, 2019 WL 6872518 (December 17, 2019).

In *Pratt*, the trial court found the defendant guilty of child molestation in the first degree after being accusing of sexually assaulted M.B.---the daughter of Pratt’s aunt’s stepsister---while M.B. and Pratt were both sleeping in a tent for her cousin’s birthday sleepover party that occurred at the home of Pratt’s aunt and uncle. *Pratt*, slip. op. at*1.

At trial, the testimony established the that the young guests at the party slept in a tent set up in the back yard and the Pratt attended the party with his daughter, who had requested that Pratt sleep in the tent with her because she was scared and that the day after the sleepover, M.B. told her

parents that she had woken up to Pratt touching her. *Pratt*, slip op. at *1. “Pratt’s aunt told the jury that M.B.’s parents may have said “hi and bye” to Pratt but otherwise she didn’t think they ever really had a conversation with each other.” *Pratt*, slip. op. at *2. The victim’s mother did not know Pratt, never interacted with him, had never had a conversation with him, and had never met him. *Id.* Pratt’s aunt said M.B. met Pratt but she did not know when and that she and her husband saw Pratt often because he always received invitations to parties, but did not know if Pratt and M.B. had “really talked to each other ever.” *Pratt*, slip op. at *2. The trial court imposed a SSOSA disposition over the State’s and the victim’s objections. *Pratt*, slip op. at *2. The State appealed and this Court noted that the evidence of a connection between Pratt and M.B. “is minimal and conflicting, it is sufficient to persuade a fair-minded rational person that [‘]the Defendant knew of the Victim, and had been acquainted with the Victim’s family,[‘]” and that the victim and Defendant had contact during the course of a party other than the crime itself. *Pratt*, slip op. at *4.

This Court found that the word “established” modifies both “relationship” and “connection,” meaning that the statute requires an “established relationship with” or an “established connection to” the victim. *Pratt*, slip op. at *4. Pratt argued only that he had a “connection” with M.B. and did not argue they had a relationship, established or otherwise. This

Court held that Pratt did not have an “established connection,” with M.B., and that Pratt and M.B. met for the first time at the party and that “other than the sexual molestation, their only connections involved Pratt giving MB a skewer with marshmallows and asking M.B. her name.” *Pratt*, slip op. at *4-5. This Court held that Pratt is not eligible for a SSOSA sentence and remanded for resentencing. *Pratt*, slip op. at *6.

This Court noted:

The legislature intended the connection between the victim and the offender to be close enough that a SSOSA sentence would encourage reporting despite that connection. It was not meant to apply to an offender who could not remember meeting or speaking to the victim before the incident and had nothing beyond a possible “hi-bye” acquaintance with her parents.

Pratt, slip op. at *5.

The relationship between Spaulding and K.M. satisfies all these criteria. Spaulding can say with certitude when he first communicated with K.M., the nature of their social media communications, and can say when they first met in person (the morning of August 8), and the defined parameters of the their relationship (they flirted, touched each other, and K.M. was going to move into house and they were going to live together).

Moreover, unlike Pratt, Spaulding had an established relationship with K.M. Spaulding knew of K.M. before they met, and unlike Pratt, certainly knew K.M.’s name prior to meeting for the first time on the

morning of August 8. Spaulding and K.M. messaged each other several times prior to meeting in person, and they had mutual friends. Following their meeting on August 8, their relationship developed; they went shopping together where he bought her items including makeup and clothing. They then went to Spaulding's house, where he was "flirty" and touched her buttocks. CP 309. K.M. told police that she did not object to this touching because they were developing a relationship and they had decided that she would live with him. CP 309. In furtherance of the decision to move into his house, they were both preparing a room for K.M. CP 309. The relationship between Spaulding and K.M. was an established one—they met in person and decided to live together. Their connection was not the attenuated "distant relative" type of "relationship" described in *Pratt* where their interaction was limited to handing the victim a skewer and possibly asking the victim her name. In short, Spaulding and K.M., although had only met in person on the day of the incident, had an emotional attachment indicative of the precise type of relationship contemplated by the legislature when it enacted RCW 9.94A.670, in which the connection between the victim and the offender was close enough that a SSOSA sentence would encourage reporting despite that connection.

F. CONCLUSION

For the reasons stated herein, and in appellant's opening brief, the appellant respectfully requests this Court to remand for resentencing for consideration of a SOSSA disposition.

DATED: January 3, 2020.

Respectfully submitted,
THE TILLER LAW FIRM

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

PETER B. TILLER-WSBA 20835
Of Attorneys for Jason Spaulding

CERTIFICATE OF SERVICE

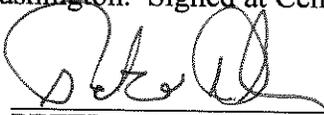
The undersigned certifies that on October 2, 2019, that this Appellant's Opening Brief was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and Jesse Espinoza and copies were mailed by U.S. mail, postage prepaid, to the following Appellant:

Jesse Espinoza
Clallam County Prosecutor's Office
223 East 4th Street, Suite 11
Port Angeles, WA 98362-3000
jespinoza@co.clallam.wa.us

Mr. Derek Byrne
Clerk of the Court
Court of Appeals
950 Broadway, Ste.300
Tacoma, WA 98402-4454

Jason Spaulding
DOC# 334312
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326
LEGAL MAIL/SPECIAL MAIL

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on January 3, 2020.



PETER B. TILLER

THE TILLER LAW FIRM

January 03, 2020 - 4:20 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53253-1
Appellate Court Case Title: State of Washington, Respondent v. Jason Spaulding, Appellant
Superior Court Case Number: 18-1-00339-2

The following documents have been uploaded:

- 532531_Briefs_20200103161941D2714163_6320.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was 20200103161356454.pdf

A copy of the uploaded files will be sent to:

- jespinoza@co.clallam.wa.us

Comments:

Sender Name: Kirstie Elder - Email: Kelder@tillerlaw.com

Filing on Behalf of: Peter B. Tiller - Email: ptiller@tillerlaw.com (Alternate Email: Kelder@tillerlaw.com)

Address:
PO Box 58
Centralia, WA, 98531
Phone: (360) 736-9301

Note: The Filing Id is 20200103161941D2714163