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Court of Appeals

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

State of Washington

FORM S-12/9/2019 4:30 PM ADDITIONAL

GROUND FOR REVIEW

STATE OF WASHINGTON)

Respondent,)

v.)

EZRA WRIGHT)

Appellant.)

No. **53260-3-II**

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, **EZRA WRIGHT**, an inmate at Monroe Correctional Complex (MCC), have received and reviewed the opening brief prepared by my attorney. Summarized, in the pages that follow, are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

The additional grounds are attached to this statement.

Date: 2 December 2019

Signature:  _____

Subject to an extremely limited set of exceptions, all sting operations are per se gravely and deeply immoral for the simplest and plainest of reasons: They are calculated and deliberate attempts to bring out the worst in a fellow human being, to play to their weaknesses, and to pander to their blind spots. Whether performed by the government, the media, private organizations—for-profit or not-for-profit, or private individuals makes no ethical difference whatsoever, except one: When the government does it, everyone begins to think that such egregious behavior is just fine, although it is anything but. In fact, save violence and blackmail (and other like non-violent forms of extortion), there is precious little worse. [*Sting Operations Revisited More Generally: Seeing the Forest and the Tree*, Joseph S. Fulda, *Sexuality & Culture* (2011) 15:395-398

Additional Ground 1 – Expansion on Outrageous Police Conduct

- 1) Similar to *State v. Borseth* (No. 36230-2-III, 2019) and *State v. Racus* (No. 49755-7-II, 2018), I argue the scenario used by “Net Nanny” is all about deception; that the WSP is in violation of the privacy act (RCW 9.73.230, and RCW 9.73.030). Whereas the “Net Nanny” operation involved fictitious individuals with no children in any type of danger. Additionally, there is nothing in the record to indicate the WSP complied with the provisions of RCW 9.73.210(1,2). I did not give permission for any recording of my conversations and there was no commercial sexual abuse of a minor taking place. Other similar cases include *State v. Kipp* (2014), *State v. Roden* (2014) whose decisions recognize that Washington’s Privacy Act provides more protection than either the state or federal constitutions; the text messages and emails are granted full protection afforded by the Washington Privacy Act (RCW 9.73).
- 2) I was not engaged in any ongoing criminal activity. There was NO criminal activity until the “Net Nanny” operation created the potential for a fake crime. Furthermore I contend that the actions of the WSP in its continued conversation was not to prevent a crime but to assist with inducing the commission of a crime and padding its ICAC affiliate arrest and prosecution numbers.
- 3) My constitutional right to due process was violated by law enforcements failure with regards to adherence of the *ICAC Program Operational and Investigative Standards* (Case Exhibit 13).

Specifically, law enforcement did not abide by Section 8.6:

"Absent prosecutorial input to the contrary, during online dialogue, officers shall allow the Investigative target to set the tone, pace, and subject matter of the online conversation."

Sgt. Carlos Rodriguez noted under examination on the stand that he received training from several courses provided by ICAC (Case transcript page 347, line 9). That the individuals who generate the ads have been trained through ICAC (p. 362, 24). That the chatter, Officer Kleinfelder, has had “hundreds of hours of advanced training.” (p.433, 17) That MECTF is an affiliate of ICAC (p.416, 18).

Furthermore, there is an Interagency agreement¹ between Washington State ICAC and Thurston County Sheriff’s office, which participated in this “Net Nanny” sting operation. For those agencies who participate in the ICAC Task Force the ICAC Operation Standards are a mandatory aspect of participation in the national program as spelled out by Mike Edwards, WA ICAC Task Force commander in an e-mail “Important Message for WA ICAC Affiliates” sent in July 2016. (E-mail is a part of the *State v. Glant* case in their Motion to Dismiss (Exhibit R), March 2018.)

It was Law Enforcement that 1) Posted the Craigslist ad on their Casual Encounters section violating the Craigslist “Terms of Use” by submitting a misleading and unlawful post which was later flagged for deletion. The ad was vague “Family Play Time – w4m” and misleading by falsely advertising. The SESTA/FOSTA bill, S. 1693, H.R. 1865, has since been enacted which resulted in Craigslist personal ads being shut down as the new bill allows victims of sex trafficking to sue websites that enable their abuse. 2) Law enforcement did not follow a lead but rather randomly targeted individuals by posting an ad on a public forum; rather than trying to stop a crime they instigated a crime (*State v. Joshua Joseph Solomon*, 2018). 3) Law enforcement started the discussion with children “Did you have experience with younger kids?”, ages, and brought up sex first “I’d like to watch someone have sex with them.” 4) Law enforcement told me to bring condoms, 5) Law enforcement forced the meeting location—five times between 5:05pm until 5:56pm I asked to meet. After the conversation stalled the detective stated “your attractive. but tell me specifically what you want with me kids” at which I stated “I’ll have sex with the girls” to keep the conversation going. I further asked for a meeting in a neutral location four more times between 7:24pm and 8:27pm prior to agreeing

¹ICAC Interagency agreement: <https://www.thurstoncountywa.gov/tchome/Pages/legalnotices.aspx>

to law enforcements meeting location demands. 6) Law enforcement completely led the tone, pace, and subject matter of the conversation—in violation with the ICAC standards Section 8.6. The prosecutor noted “that Officer Kleinfelder gave a lot of outs to Mr. Wright” (p.339, 23) some of which included:

5:00pm – “my gut tells me you aren't for real in this. why no pic”

5:53pm – “I have rules the first one is honesty and the next is directness. I don't feel i'm getting either from you. I'm trying to filter out the fakes and I think y”

5:56pm – “i understand. then this is not for you”

6:00pm – “wow. you want apic of my family and i cant get one of you. later”

8:25pm – “It's ok if you don't want to come here. You can walk away I'd understand”

8:29pm – “I get it Maybe this isn' for you. I'm not talking my 11 year old and 6 year old out in the middle of the night to meet. Either at my place or this isn for you”

This can be interpreted many ways. One is that law enforcement is pushing back. Another is that they are trying to emotionally manipulate me. An obvious aspect occurring throughout the conversation is if the conversation goes sideways from what the detective wants (sex with child, meeting at trap house), there is a tone of cutting off the chatter. If the goal is to meet then you have to play along as was done. Sex is not brought up until the detective brings it up and it is only done so to keep the conversation going. Condoms were brought because I was expecting to have sex with the mom. Law enforcement, with their hundreds of hours of training and experience, knew by the conversation that I was not a predator but rather curious/suspicious and highly engaged in having a meeting no matter what. The detective could have ceased the conversation but did not do so. “Public policy allows for some deceitful conduct and violation of criminal laws by [law enforcement] in order to detect and eliminate criminal activity.” *Lively*, 130 Wn.2d at 20. In *State v. Harris* (No. 60622-0-II, 2019) the detective also improperly steered the tone, pace, and subjective matter of the conversation. I argue, what good are standards and laws if strict and mandatory adherence are ignored wherein laws are adjusted to suit the needs of law enforcement/government and not the citizens they are enacted to protect. I further argue that the conditions above meet the outrageous law enforcement conduct wherein law enforcement knew a criminal activity would not take place based on the conversation. There was no communication with a minor, no grooming or rapport building, no sexual suggestive photographs, and no sexual talk over the 1 day, 92 message discussion.

Additional Ground 2 – Expansion on the Entrapment Argument

“Net Nanny” Cases where Entrapment was allowed: *State v. Thomas Lee Bramblee* (16-1-02629-1), *State v. Timothy J. Rondeau* (18-1-00073-16), *State v. Chapman* (No. 50089-2-II). In *State v. Chapman* the appeals court ruled that the trial court erred by refusing to instruct the jury on entrapment for two charges and reversed the decision which resulted in dismissal at the lower court level. In *State v. Rondeau* the entrapment defense was allowed at the lower court level resulting in an acquittal on one charge and hung jury/dismissal on the second charge.

It is a misconception that the defendant must admit the crime to allow the entrapment argument. In *State v. Galisia* the court ruled that entrapment would be entitled and that the defendant only has to admit the acts, not the crime charged. This is the same with *State v. Chapman*.

There needs to be a balance and fairness to the system that addresses tactics that can even entrap individuals with no prior criminal record or predisposition to commit the crime and put them behind bars for years with lifetime parole. This outrageous government conduct threatens Americans’ constitutionally enshrined right to due process and this behavior is likely to increase and worsen without allowance of a proper entrapment defense RCW 9A.16.070 to help balance the judicial unfairness in the court.

Additional Ground 3 – Felony Judgement and Sentence (FJS): Appendix H, Item #20

In reviewing Appendix H of the FJS, I request the court to strike condition (20):

(20) No access to social medial websites including (Facebook, Instagram, snapchat, chat rooms, etc.);

This restriction is overbroad and would likely include educational related forums and the job searching sites LinkedIn, Indeed, jobs.com, and many others. This would be a great detriment to job connections and job searching in this day and age. Are a felony and Sex Offender registration handicap not sufficient enough that the court needs to impose further restrictions which impose on First and Eight Amendment rights? In *State v. Bramblee* (2019), *State v. Brandon Jerald Johnson* (2018) and *State v. Padilla* (2018) the court must strike the challenged condition if there is no evidence in the record linking the circumstances of the crime to the condition. In this case Craigslist Casual Encounters (hookup site) was used, not social media. I would also like to direct the court to the Supreme Court decision “*Packingham v. North Carolina*” (No. 15-1194) decided on June 19, 2017 wherein the restriction to lawful speech is in violation of the First Amendment.

(a) A fundamental First Amendment principle is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. Today, one of the most important places to exchange views is cyberspace, particularly social media, which offers “relatively unlimited, low-cost capacity for communication of all kinds,” *Reno v. American Civil Liberties Union*, 521 U. S. 844, 870, to users engaged in a wide array of protected First Amendment activity on any number of diverse topics. The Internet’s forces and directions are so new, so protean, and so far reaching that courts must be conscious that what they say today may be obsolete tomorrow. Here, in one of the first cases the Court has taken to address the relationship between the First Amendment and the modern Internet, the Court must exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium.

Additional Ground 4 – Improper use of RCW 13.60.100 through 13.60.120

RCW 13.60.100 established the creation of a task force related to missing and exploited children.

Established in 1999 and known as the *Teekah Lewis Act*. RCW 13.60.110 establishes the Task force activities. RCW 13.60.120 establishes an advisory board. Nowhere in these RCW's does it mention or allow the use of proactive/random sting operations in dealing with cases involving missing or exploited children.

MECTF, noted in their own training presentations (NN Pres UT - Training Other Law Enforcement for UC Op.pdf) in 2016, pg7, "Focus: Suspects wanting to perpetrate crimes against children and Recover children that are being sexually exploited or at risk of being sexually exploited." This is a very noble cause but NOT when placing ads on Craigslist Casual Encounters and other websites to target RANDOM individuals; most of whom have no criminal history. Two other cases, *State v. Glant* and *State v. Gabriel Augusto Garcia*, in the appeals stage also touch on the Task Force improprieties with regards to tactics and funding solicitations.

Additional Ground 5 – Improper use of Criminal Law 9A.44.073 AND 9A.28.020

The law applied in this case is “Attempted Rape of a Child in the first degree” (9A.44.073 AND 9A.28.020). This law is based on sexual intercourse with anyone who is less than 12 years old. Second degree age changes between 12 -13 and Third degree is between 14-15. The task force is exploiting the law and fictional children ages in order to maximize punishment (Class A Felony with lifetime Community Custody obligations) via sentencing manipulation; the lower the age the harsher the punishment. This law, written in 1988 predates the internet and does not foresee events such as sting operations being applied where no victim can be harmed or impossible crimes. SSOSA was established in 1984 requiring an offender/victim relationship and has been revised over the years; again, sting operations or crimes with no victims were not considered. It is these no victim, low level, crimes which potential “sex offenders” would greatly benefit from having SSOSA like options including the elimination of lifetime supervision for the criminal laws being utilized in these sting operations. In my sentencing hearing I made an argument for SSOSA eligibility during sentencing which was denied by the court due to there being no victim.

It is my argument the strict laws in Washington State are being misapplied and exploited by the WSP and prosecutors to impose the highest degree of capital punishment possible in these “Net Nanny” sting operation cases. In *State v. Younes Kerrou*² (15-1-02848-2, 15-1-02891-1) where Rape 1, Kidnapping, and Rape of a Child in the Second degree occurred, the defendant received a 15 and 9 month concurrent sentence through a plea, whereas someone arrested during a Net Nanny sting in the same county (Pierce) and same year, typically received a 60 months or greater sentence.³ The actual act of rape, of a 13 year old child, resulted in a quarter of the sentence! These exploited laws with their overly harsh punishment and restrictions, including lifetime community custody, are a violation of our U.S. Constitution’s Eighth Amendment (prohibiting cruel and unusual punishments).

²<https://www.thenewtribune.com/news/local/crime/article81713852.html>

³<https://www.thenewtribune.com/news/local/crime/article199748519.html>

The WSP and Prosecutors are joined at the hip in abusing these laws (In 2019 both Carlos Rodriguez and Pierce County Prosecutor John Neeb participated together in a Crimes against Children conference in Dallas⁴ and Sex Trafficking conference in Tacoma, WA⁵)! A similar case out of Oregon, *State of Oregon vs. William Glenn Street* (Case No. 18CR06492) utilized a specifically created law, ORS 163.433 – Online sexual corruption of a child in the first degree which takes into consideration a child and the internet. It is a law created in 2007, a Class B Felony and is punishable by a maximum of 19-20 months for someone with no record. In the Street case the court found no felonies and recommended that “probation is more likely to offer rehabilitation than prison.” I argue MECTF and the WSP are exploiting the law to maximize punishment for these impossible/fake crimes, works with prosecutors to NOT allow Entrapment, NOT allow SSOSA or other sentencing alternative (Net Nanny #6, Clark County, noted “*The defendant is NOT free to argue for SSOSA.*” as part of the pretrial settlement agreement), and NOT allow reasonable plea downs for impossible crimes especially when law enforcement has all the evidence and witness to present slam dunk cases (2015-2019: 35 Trials with only 2 acquittals). Antonin Scalia noted during his Supreme Court confirmation hearings that Jurors “can ignore the law” if the law “is producing a terrible result.” These sting operations fit the bill where Jury nullification should occur.

⁴<https://www.eventscribe.com/2019/CACC/biography.asp>

⁵<https://strapwaconference2019.sched.com/event/MhFS/lunch-and-operation-net-nanny-a-collaborative-attack-on-child-sex-trafficking>

Conclusions

How far is too far in trying to address the apparent sex trade on the internet? If MECTF's focus is to concentrate on suspects who want to perpetrate crimes against children, why are they targeting random people on hookup and dating sites? Those involved in sex trafficking (children or not) are going to be using the dark web (silk road, etc.) not Craigslist! The WSP casting a WIDE NET and "Catfishing"⁶ people is counterproductive and ends up punishing harmless individuals versus those who pose a genuine criminal threat to the public. Indeed, I was intending to hook up with adult women using Craigslist Casual Encounters personal ads. Nine craigslist ads (on an 18 and over forum) were responded to that 9th of September (as shown in Exhibit #17 (p.515, 14) not admitted by the Court) but only two responded back. I was working to determine the fakes and the flakes and was very suspicious along the way with how the conversation was going with the "sting" ad. With the internet it is hard to determine what is real and who is telling the truth without an actual face to face encounter. I played along, though given "outs" to see what was real from fiction. As a 20 year old using these sites for the first time my inexperience was exploited. I showed up and was subsequently arrested, charge, tried, and sent to prison with a 50 month sentence.

Throughout the conversation it can be seen that Law enforcement knew I was not a sexual predator – there was no grooming, sexually explicit pictures or sexual talk, in fact most of the conversation surrounded suspicion, illegality, and if there were cops on the other end. Doubt and disbelief is what occurred. Showing up and text chatter is sufficient to convict a person of the crime so Prosecutors prosecute these easy cases with extremely over the top laws not designed for these sting operations. When did we start convicting people based off text messages? Statistically, "Stranger Danger" is misleading as over 95% of sexual assaults are committed by family members or acquaintances (NR2014, p. 46).⁷

⁶Catfishing [Urban Dictionary]: The phenomenon of internet predators that fabricate online identities and entire social circles to trick people into emotional/romantic relationships.

⁷OJJDP National Report from 2014: <https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf>.

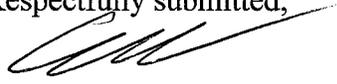
This statistic and the fact that Sgt. Carlos Rodriguez, during voir dire examination, stated child pornography is discovered “about 6 or 7% of the time” should make one question whether or not these sting operations are actually arresting the child predators MECTF is trying to target. (p398, 16). Given all the points made above I respectfully request the Court to reverse my convictions and remand for dismissal with prejudice of the charges. Alternatively, my conviction should be reversed and this case remanded for a new trial with allowance of the entrapment argument.

“It’s a very scary time for young men in America because you can be guilty of something that you may not be guilty of.” - President Donald Trump (2-Oct-2018)⁸

“¹² So whatever you say or whatever you do, remember that you will be judged by the law that sets you free. ¹³ There will be no mercy for those who have not shown mercy to others. But if you have been merciful, God will be merciful when he judges you.” - James 3:12-13 (NLT)

Dated this 2nd day of December 2019.

Respectfully submitted,


Ezra Wright, DOC#413627

⁸<https://www.cnn.com/2018/10/02/politics/trump-scary-time-for-young-men-metoo/index.html>

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DIVISION TWO**

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EZRA WRIGHT,

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NO. 53260-3-II

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