

COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION III

FILED

MAR 26 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,|

Petitioner / Respondent,

vs.

JACOB CUNNINGHAM,

Respondent / Appellant.

COA NO. 328091

SUPERIOR COURT

NO. 08-8-00517-4

REPLY BRIEF OF APPELLANT

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Case Law

State v. J.P., 149 Wn.2d 444 (2003)3

State v. Neher, 112 Wn.2d 347 (1989).3

Statutes

RCW 13.50.010 (12)(a)(v)3

Argument

The focus of the discourse is whether actual force must be used during the commission of the underlying conviction when a motion to seal records is made by a person convicted of Indecent Liberties with Forcible Compulsion. As pointed out by the State, statutes are interpreted to give effect to **all** language in the statute and render no portion meaningless or superfluous, as well in a manner that avoids an unlikely or absurd result. **State v. J.P.**, 149 Wn.2d 444, 450 (2003); **State v. Neher**, 112 Wn.2d 347, 351 (1989).

The State focuses only on “absurd” result that comes from requiring actual force as a necessary component of the analysis and encourages the Court to disregard it. The irony, of course, is that the requirement originates from the statute itself: “[t]he person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was **actually** committed with forcible compulsion” RCW 13.50.010(12)(a)(v).

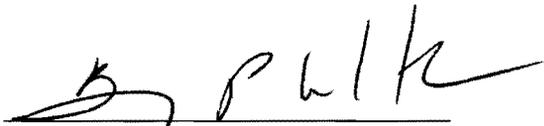
The second portion of the State’s argument focuses on whether there were sufficient facts for a conviction on a charge of Indecent Liberties with Forcible Compulsion. The validity of the

underlying conviction is not at issue here. The request is the Court give meaning to EVERY word of the statute. The State's argument on the issue, however, only holds up if the Court disregards the requirement of actual physical force:

“Certainly the five-year-old vulnerable child could have felt threatened by physical injury from the thirteen-year-old appellant when he told him not to tell anyone about his activities.” (emphasis added) Brief of Appellee at 9.

A loud voice and condescending tone will not change the fact that force is not present. The record should be sealed because the requirements of the statute.

RESPECTFULLY SUBMITTED


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