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No. 36591-3-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

YASIR M. MAJEED,

Appellant

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

NO. 17-1-00793-9

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. “The State failed to charge a crime in Count II.” The State disagrees; Count II mirrors the language of the statute.
- B. “There was insufficient evidence as a matter of law to support the conviction on Count II, commercial sexual abuse of a minor.” The State disagrees. There was sufficient evidence that the defendant agreed with a third person to pay for sexual contact with a minor.
- C. “The court’s instruction setting out the elements of Count III failed to include one essential element, making the verdict invalid.” The State disagrees. The “to-convict” instruction properly set out all the elements of Communication with a Minor for Immoral Purposes, including the electronic communication element.
- D. “Appellant assigns error to Instruction 17.” The State disagrees. This is the “to-convict” instruction for Communication with a Minor for Immoral Purposes and properly sets out all elements.
- E. “Appellant assigns error to Instruction No. 18 as an unconstitutional comment of evidence” The State disagrees. The instruction is an accurate statement of the law, is not a comment on the evidence and had no impact of the jury verdict.

II. STATEMENT OF FACTS

A. **The Washington State Patrol conducts a Net Nanny operation in Benton County.**

The Washington State Patrol Missing and Exploited Children's Task Force conducted a proactive, "Net Nanny," operation in Benton County in July 2017. RP at 343, 346-47. As part of that operation, Sergeant Carlos Rodriguez placed an advertisement in Craigslist pretending to be a 13-year-old girl, Denise Collins. RP at 363, 371. The advertisement was admitted as Exhibit 3 at trial and is attached as Appendix A.

The coded language in the advertisement includes:

- "w4m": woman looking for a man. RP at 350.
- "DDF": disease and drug free. RP at 367.
- "Young looking for older": The advertiser is stating that she is young and is looking for an older man. RP at 366.
- "Let's get lit": The advertiser wants to get high or drink with another man. RP at 367.

The defendant responded via email to this ad. The email correspondence was admitted as Exhibit 4 at trial and is attached as Appendix B. Sgt. Rodriguez, posing as a 13-year-old girl, tells the defendant,

I am in need of a daddy. I ran away a while ago cuz my mom is a bitch. Just hanging with friends for right now. But just want to have some fun, forget about things. If you want to have some fun with me, tell me how and let's chat. I'm getting a lot of responses, so get me your phone number and we can talk. If you don't like young fun, then this isn't for you. I'm 13, but I am all woman and fine AF.

RP at 370. Sgt. Rodriguez testified that "AF" is code for "Ass F—." *Id.*

The defendant offered to pay "Denise". "And I'll make it worth your time." App. B, email at 4:24 P.M. He made the same offer 30 minutes later. "I will make it worth your time and will pay you." App. B, email at 4:54 P.M.

Sgt. Rodriguez requested they continue using text messages, rather than email, and turned the conversation over to Det. Pohl to continue. RP at 377. Exhibit 8 is the log of text messages and is attached as Appendix C. The defendant's offer to pay "Denise" continued. "So where you at and how much you think?" RP at 417. "Denise" responded, "It depends on what you want to do with me daddy. Tell me." RP at 418-19.

The discussion of the money exchange continued. "Denise": "How long do you want to hang out." RP at 420. The amount of time would determine how much "Denise" would charge. Defendant: "Like 30 minutes or so." "Denise": That's all daddy? A hundred dollars and bring condoms, daddy. I really like strawberry-flavored lube. *Id.*

The defendant asked “Denise” to confirm her age. “So, how old are you again.” RP at 421. “Denise”: “13, silly daddy.” *Id.*

The following day the defendant resumed the text conversation with “Hey, what you doing?” at 11:57 A.M. App. C; RP at 423. The conversation again centered on sexual contact and the defendant offered money in exchange.

Defendant: What are you up to this evening? RP at 423.

“Denise”: Looking for a date. *Id.*

Defendant: No need, you’re mine. *Id.*

Defendant: I will get u. *Id.*

“Denise”: What you going to do with me, daddy? *Id.*

Defendant: Wait and see, baby. *Id.*

Defendant: I will take care of you. *Id.*

“Denise”: I have some other options tonight, daddy. So I need to know what you’re looking for and money. \$\$\$. RP at 425.

Defendant: I want you and will give you 100. *Id.*

“Denise”: Can you bring condoms? I can’t get preggo, daddy. RP at 426.

Defendant: I have some. *Id.*

“Denise”: You into anything kinky. *Id.*

Defendant: I want you bad. *Id.*

Defendant: I want to feel you, every hole of you. *Id.*

“Denise”: Anal would be more, daddy, but that sounds good. *Id.*

The defendant then asked for “Denise’s” address. *Id.* The defendant was surveilled driving into the corresponding apartment complex. RP at 470. The defendant stated he believed it was a scam and did not stop in the apartment complex or ask for a specific apartment number. RP at 535. Surveillance officers arrested him and found \$100 in cash on his person along with four condoms. RP at 483.

B. The defendant’s version:

The defendant testified that he had met 5-10 people and had sex with 4-5 via the personal section of Craigslist. RP at 511-12. He testified that he thought “Denise” was engaged in role play. RP at 516. When he emailed, “I will make it worth your time and will pay you” he simply meant to explore the role of a sugar daddy, not pay for sex. RP at 522. Note that this comment came at 4:54 P.M. on July 7. See App. B. The sole mention of a sugar daddy was later that night, at 8:31 P.M. in a text message. He admitted going to the apartment complex but claimed he did so just out of curiosity. RP at 541.

C. The charges, jury instructions, and verdicts:

The defendant was charged in a third amended Information with 1) Attempted Rape in the Second Degree, 2) Commercial Sexual Abuse of a

Minor, and 3) Communication with a Minor for Immoral Purposes. CP 14-15. There were no objections to the amended information and there were no objections to the jury instructions. RP at 43-44, 489-90, 563. The jury found the defendant guilty of Counts 2 and 3 but were hung on Count 1. CP 43-45.

III. ARGUMENT

A. Response to the defendant's first argument: Count II of the Third Amended Information was adequate. The statute does not require the defendant to contract with an actual child for sex.

1. Standard on review:

As stated in *State v. Kjorsvik*, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991), the primary purpose of a charging document is to supply the defendant with notice of the charge that he or she must be prepared to meet. Charging documents which are not challenged until after the verdict will be more liberally construed in favor of validity than those challenged before or during the trial. Where the challenge to the sufficiency of an Information is raised for the first time on appeal, the reviewing court will require at least some language in the Information giving notice of an allegedly missing element, and if the language is vague, an inquiry may be required into whether there was actual prejudice to the defendant.

Because the defendant failed to challenge the Information at trial, it should be liberally construed in favor of its validity.

2. The Information mirrors the language of the statute, which criminalizes a defendant contracting with an adult to prostitute a juvenile.

Count II of the Third Amended Information exactly matches the language of the Statute on Commercial Sexual Abuse of a Minor and has all the essential elements of that crime.

Count II of the Third Amended Information states:

That the said **YASIR M. MAJEED** in the County of Benton, State of Washington, during the time intervening between the 7th day of July 2017, and the 8th day of July, 2017, in violation of RCW 9.68A.100(1)(b), did pay or agree to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him, to wit: did agree to pay a person the defendant believed was a thirteen (13) year old female \$100 for sexual conduct, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

App. D.

Compare this to RCW 9.68A.100(1)(b):

A person is guilty of commercial sexual abuse of a minor if: (b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her.

App. E.

The defendant argues that the “to wit” portion (“to wit: did agree to pay a person the defendant believed was a thirteen (13) year old female \$100 for sexual conduct”) is not an accurate interpretation of the Statute. Specifically, the defendant argues that the statute does not criminalize a person agreeing to pay a fee to a third person in exchange for sex with a minor, if the minor does not exist.

This is a misreading of RCW 9.68A.100(1)(b). The elements of that statute are: (1) The defendant pays or agrees to pay a fee, (2) to a minor or a third person, (3) pursuant to an understanding that in return therefore such minor, and (4) will engage in sexual conduct with the defendant.

The only uncertainty in the statute is what the legislature meant by the phrase “such minor.” Does the phrase refer to a specific minor or some implied or undefined minor? In either case, the defendant committed the crime charged. If “such minor” is interpreted to mean a specific individual, the defendant contracted with a third person to have sex with “Denise” who he thought was 13. If “such minor” is interpreted to mean an implied or undefined minor, the defendant’s argument could be accepted, and he would still be guilty. He agreed with a third person to pay for sex with a child—although that child was only implied, undefined, or nonexistent.

Two things may help to resolve the question: The legislative purpose of the statute and the dictionary definition of “such.”

The legislative findings in RCW 9.68A.001 reinforce that the legislature did not intend to require a child necessarily to be involved where adults agree to a sex-for-money deal involving a minor:

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children....The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse....It is the intent of the legislature...to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The dictionary meaning of “such” refers to this particular thing or an implied and undefined thing. The American Heritage Dictionary of the English Language defines “such” as:

- 1) Of this kind: *a single parent, one of many such people in the neighborhood.*
- 2) Of a kind specified or implied: *a boy such as yourself.*
- 3) Someone or something implied or indicated: *Such are the fortunes of war.*
- 4) Similar things or people; the like: *pins, needles, and such.*

Such, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, <https://ahdictionary.com/word/search.html?q=such> (last visited Jan. 13, 2020).

The phrase “such minor” in RCW 9.68A.100(1)(b) does not mean that there has to be an actual minor, ready to testify that he or she engages in prostitution. The crime is completed when an agreement is made between a defendant and a third person to have a minor engage in sexual contact for a fee. Since the statute criminalizes a person agreeing with a third party to pay for sex with a juvenile, the juvenile may not be known to the customer. It does not matter if money changes hands, if the juvenile is displayed to the defendant, or if the juvenile is real.

State v. Racus, 7 Wn. App. 2d 287, 433 P.3d 830 (2019) supports the position that RCW 9.68A.100(1)(b) is violated when a defendant agrees with another person to pay a fee for sexual contact with a juvenile as part of a police sting operation and the juvenile does not exist. In *Racus* the main issue was whether the recorded telephone calls the defendant had with an undercover Washington State Patrol detective were in violation of the Washington Privacy Act. The detective was posing as a mother offering to let the defendant have sex with her minor daughter in exchange for a fee. The *Racus* court held there was probable cause to believe the defendant would engage in the Commercial Sexual Abuse of a Minor in exchange for a fee.

The defendant also argues that the legislature could have explicitly stated that a defendant violates the Commercial Sexual Abuse of a Child

statute by stating it applies to minors or “a person who the defendant believes is a minor,” similar to language in the Communication with a Minor for Immoral Purposes statute, RCW 9.68A.090. However, the statute is plain on its face. A defendant who comes to an understanding with a third person to pay for sex with a minor is guilty of Commercial Sexual Abuse of a Child, whether a minor is under the thumb of a pimp, whether a mother would really force her child into prostitution, or whether the child exists.

The point at which the crime is completed is the difference between Commercial Sexual Abuse of a Child and Communication with a Minor and other statutes the defendant cites such as Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct and Rape of a Child. The crime of Commercial Sexual Abuse of a Child is completed upon the agreement to exchange money for sex with a minor. The agreement does not require the existence of a child prostitute. Child Rape, Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct, or Communication with a Minor are completed when a child has intercourse with an adult, when a person possesses photos of children engaged in sexually explicit behavior, or when an adult speaks to a child, or a person he thinks is a child, for immoral purposes.

Further, the “to wit” section of Count II is surplusage. Surplus language in a charging document may be disregarded. *State v. Tvedt*, 153 Wn.2d 705, 718, 107 P.3d 728 (2005). Where unnecessary language is included in a charging document, the surplusage is not an element that must be proved unless it is repeated in the jury instructions. Nor is the Information inadequate if the defendant is not prejudiced by the inclusion of the unnecessary language. *Id.*

In sum, the defendant’s argument that the Information does not state a crime in Count II is incorrect. The Information mirrors the language in the statute. The defendant was informed precisely what the State alleged and what the statute required. All elements of RCW 9.68A.100(1)(b) are in the Information. The Information meets the requirements of *Kjorsvik* and its progeny; there was no prejudice to the defendant. The plain language of the statute as well as the legislative findings indicate the crime is completed when an agreement is made to provide a child for sex in exchange for money. A child does not have to be placed in risk for the crime of Commercial Sexual Abuse of a Child to be completed.

B. Response to the defendant’s second argument: There was sufficient evidence to support a conviction as a matter of law.

1. Standard on review:

A reviewing court conducting an evidentiary sufficiency inquiry into a criminal conviction must consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Phuong*, 174 Wn. App. 494, 502, 299 P.3d 37 (2013).

2. There was sufficient evidence to prove Count II.

This is a different version of the defendant's first argument.

The "to-convict" instruction, No. 15, states:

To convict the defendant of the crime of commercial sexual abuse of a minor, each of the following elements of the crime must be proved beyond a reasonable doubt:

- 1) That on or about July 7-8, 2017, the defendant agreed to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him; and
- 2) That this act occurred in the State of Washington.

App. F.

The defendant offered to pay \$100 for sex to "Denise," who he thought was a 13-year-old girl. The portion of the element stating, "the defendant agreed to pay a fee to a minor or a third person," is satisfied. Although the defendant was not dealing with an actual minor, he was communicating with a third person.

The portion of the element "that in return therefore such minor will engage in sexual conduct with him" is satisfied because "Denise" agreed

that in return for the \$100 a minor would engage in sexual conduct with him. The interpretation of “such minor” in the statute is discussed in the section above. The statute contemplates a defendant agreeing with a pimp to provide a minor child for sex in exchange for a fee, without the defendant ever seeing the child. “Such minor” is therefore meant in the sense of an implied or undefined minor, not a particular, specific individual.

Even accepting the defendant’s argument, the defendant agreed with a third party, the detective portraying 13-year-old “Denise”, to pay a fee in exchange for sexual conduct by “such minor”—namely, Denise.

There was sufficient evidence for a rational jury to convict the defendant.

C. Response to the defendant’s third argument: The “to convict” instruction did not omit any element.

1. Standard on review:

A challenge on whether the “to convict” instruction omitted an element can be raised for the first time on appeal and is reviewed de novo.

State v. Mills, 154 Wn.2d 1, 6-7, 109 P.3d 415 (2005).

2. The “to convict” instruction states all elements of the crime.

The “to convict” instruction, No. 17, is attached as App. G. The defendant argues that “the instruction detached the electronic nature of the

communication from the minor or the person the defendant believed was a minor. It required that the defendant sent ‘another person’ apparently another communication for immoral purposes.” Br. of Appellant at 21.

First, this strains logic. Instruction No. 17 tells the jury that they could only find the defendant guilty if they find these elements: (1) That on or about July 7-8, 2017 the defendant communicated with *another person* for immoral purposes of a sexual nature, (2) The defendant believed *the other person* was a minor, (3) That the defendant sent *another person* an electronic communication for immoral purposes, and (4) That this act occurred in the State of Washington. App. G (emphasis added).

The “another person” in element No. 1, “the other person” in element No. 2 and “another person” in the elements all refer to the same individual. A rule of grammar is that the antecedent of a pronoun is the noun that precedes the pronoun most closely and agrees in number, gender, and person with that pronoun. BRYAN GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE*, 201 (4th ed. 2018). The last antecedent rule is recognized in statutory interpretation. *State v. Bunker*, 169 Wn.2d 571, 578, 238 P.3d 487 (2010).

This rule of grammar is consistent with the only way to look at the instruction. The instruction refers to another person or the other person as singular, not plural, pronouns. In fact, reference to “the other person” is to

a specific individual who the defendant believes to be a minor. The only possible specific person meeting this characteristic is “Denise,” the persona assumed by the police.

Even without this grammatical rule, the jury could only have convicted the defendant based on his emails and texts to “Denise.” The only communications presented as evidence were the emails and texts between the defendant and “Denise.” The only communications discussed in closing arguments were those between the defendant and “Denise.” While this is not a decisive factor, *State v. Hoffman*, 116 Wn.2d 51, 106, 804 P.2d 577 (1991) cited closing arguments which were consistent with the jury instructions in holding that a jury instruction was proper.

Finally, Instruction No. 17 is based on Washington Pattern Instructions, Criminal, No. 47.06. App. G. While the WPICs are not the law, they are persuasive authority. *State v. Hayward*, 152 Wn. App. 632, 645, 217 P.3d 354 (2009).

D. Response to the defendant’s fourth argument: The Instruction is not a comment on the evidence.

1. Standard on review:

A judge is prohibited by article IV, section 16, from “conveying to the jury his or her personal attitudes toward the merits of the case” or instructing a jury that “matters of fact have been established as a matter of

law.” *State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997). Any remark that has the potential effect of suggesting that the jury need not consider an element of an offense could qualify as a judicial comment. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). Likewise, any instruction that could lead the jury to infer that the trial judge believed or disbelieved a witness is an impermissible comment on the evidence. *State v. Allen*, 161 Wn. App. 727, 742, 255 P.3d 784 (2011).

Because there is a claimed constitutional error, the defendant is not required to object to an instruction at trial in order to raise the issue on appeal. *Levy*, 156 Wn.2d at 719.

2. Instruction No. 18 is not a comment on the evidence.

Instruction No. 18 reads:

You have heard testimony from undercover officers who were involved in the government’s investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of undercover agents, in order to investigate criminal activities. Undercover agents may use false names and identities.

CP 36.

This is a correct statement of the law. *State v. Enriquez*, 45 Wn. App. 580, 585, 725 P.2d 1384 (1986); *State v. Smith*, 101 Wn.2d 36, 43, 677 P.2d 100 (1984). The defendant’s complaint is not that this is a misstatement of the law, but that there is nothing similar for the

defendant's misrepresentations in the texts or emails. Br. of Appellant at 26.

First, it is well known that people can misrepresent themselves on the internet. Both the defendant and Sgt. Rodriguez so testified. RP at 390; 512. An Instruction saying "People may use false names and identities in emails or texts" would not be important or helpful. Second, while the defendant may raise a claim that an Instruction is an improper comment on the evidence for the first time on appeal, there is no reason the defendant could not have requested a separate Instruction saying, "People may use false names and identities in emails or texts." Failure to do so should prevent the defendant from making the argument on appeal. Third, Instruction No. 1 tells the jurors that they are the sole judges of the credibility of witnesses. Instruction No. 18 is consistent with this. If the jurors had so desired, they could have concluded that the use of false identifies by law enforcement officers was "lawful but awful" and downgraded their testimony.

For these reasons, a jury could not infer from the Instruction that the trial court believed or disbelieved any witness in the case.

The defendant also argues that the Instruction "conveyed the court's impression that the agents were investigating 'criminal activities,' when the issues before the jury were the defendant's credibility and

whether a crime was committed.” Br. of Appellant at 25. The plain reading of the Instruction shows this is not so.

The first sentence of the Instruction refers to the undercover officers who testified, although not by name: “You have heard testimony from the undercover officers who were involved in the government’s investigation in this case.” The second sentence of the Instruction then switches to law enforcement officers in general: “Law enforcement officials may engage in stealth and deception, such as the use of undercover agents, in order to investigate criminal activities.” The Instruction does not conclude that Sgt. Rodriguez or Det. Pohl were investigating a crime or that a crime occurred.

There are many cases discussing Instructions which arguably go much further in commenting on evidence and which have been held to be appropriate. In *State v. Faucett*, 22 Wn. App. 869, 593 P.2d 559 (1979) the trial court instructed,

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has willfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except in so far as the same may be corroborated by other credible evidence in the case.

The conviction was affirmed.

In *State v. Carothers*, 84 Wn.2d 256, 266-67, 525 P.2d 731 (1974), the court upheld the WPIC Instruction 6.05, stating that the testimony of an accomplice, given on behalf of the state, should be acted upon with great care and caution and should be subjected to careful examination in the light of other evidence in the case. The jury should not convict upon such testimony alone unless, after carefully examining it, it was satisfied beyond all reasonable doubt of its truth. The defense wanted to qualify the word “‘accomplice’ with the phrase ‘or one who claims to be an accomplice.’” In rejecting this argument, the *Carothers* court held that “an instruction to view the testimony of an accomplice with caution is an indication not of the judge’s attitude toward the testimony of particular witness, but of the attitude of the courts generally toward the testimony of witnesses of this type.” *Id.* at 267-68.

In *State v. Hansen*, 46 Wn. App. 292, 730 P.2d 706 (1986), the following colloquy occurred during cross examination of a defense expert:

THE COURT: She didn’t ask for your expertise. She asked you a simple question, whether it was for the period of time before June 1st it amounted to two grams a day. Either yes or no?

THE WITNESS: Thank you, your Honor. The answer is no.

THE COURT: He’s changed.

Id. at 295.

The *Hansen* court held to a peripheral and unimportant issue—the quality of cocaine use upon which the witness had based his opinion. It was not a prohibited comment on the merits of a disputed issue. *Id.* at 301.

On the other hand, the cases which have held that a trial judge has commented on the evidence are much more blatant than that herein. In *State v. Thompson*, 132 Wn. 124, 231 P. 461 (1924) the court reversed the conviction where the trial court instructed the jury, “The law recognizes that the defense of an alibi is one easily fabricated, easy to prove, and hard to disprove.” *Id.* at 125.

In *State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997) the jury was instructed in a special verdict and asked whether the defendants were within 1,000 feet of school grounds, “to wit: Youth Employment Education Program [YEP] School.” The *Becker* court held that this relieved the State from proving that the program was, in fact, a school. In *Becker* the “school” was a GED program on the third floor of a commercial office building and there was a legitimate issue about whether it had the traditional attributes of a school required by law. *Id.* at 58.

In *State v. Lane*, 125 Wn.2d 825, 837, 889 P.2d 929 (1995), the trial court instructed the jury about a state’s witness:

The sentence of William Blake was reduced to three months confinement and release date of June 8, 1988 given. The reasons advanced by the prosecutor and accepted by

the judge related to Mr. Blake's safety and an inadvertent disclosure near [sic] of Mr. Blake's cooperation with authorities given to an unidentified person. Whether that last statement proves or does not prove anything is a matter for the jurors.

The reason for the witness's early release was a disputed issue of fact and the *Lane* court held this was an improper comment on Blake's credibility. *Id.* at 839.

The cases cited by the defendant illustrate the contrast between this case and others which result in a reversal of the conviction. In *State v. James*, 63 Wn.2d 71, 385 P.2d 558 (1963), the trial court told the jury that a codefendant's case was dismissed on the condition that he would testify fully as to all material matters within his knowledge. *Id.* at 74. The trial court in its final instructions stated that the case against the witness had been discharged. This left the jury with the only one conclusion: the court was satisfied that the witness had testified fully as to all material matters within his knowledge. *Id.* at 76.

The defendant also cites *State v. Jackson*, 83 Wn. 514, 520-23, 145 P. 470 (1915). In *Jackson*, the trial court interrupted the cross-examination of a defense witness and asked over 10 questions of the witness. *Id.* at 520-21. The *Jackson* court held that the only inference that could be drawn is that the trial judge entertained some doubt as to the credibility of the witness. *Id.* at 522.

State v. Yanai, 128 Wn. 568, 224 P. 15 (1924) is also cited by the defendant. Witnesses were excluded from the courtroom, but one witness stood in the open doorway among the crowd which attended the trial. That witness corroborated the testimony of a prior witness. Thus, the proximity of the doorway to the witness stand and the audibility of the prior witness were factors the jury should take into consideration. However, the trial court made the following comment: “We can all take notice, in a practical way, that a witness standing outside of the door there could not have possibly heard any witness testifying here on the stand. I don’t believe he could have heard it.” *Id.* at 569.

Finally, the defendant cites *State v. Bogner*, 62 Wn.2d 247, 382 P.2d 254 (1963). The following colloquy between the court and counsel for the defense took place at the trial during the state’s examination of a policeman:

Q: Upon arriving at the office of the Project what did you find?

A: Well, on our arrival we discovered Detective Panton had already arrived and that the person that had performed the stick-up had left.

Mr. Haley: I will object to the conclusion of the officer here.

Mr. Sullivan: He can state this. Perhaps he was still there then.

The Court: Are you denying that there was a robbery at the housing project at that time on that date?

Mr. Haley: I don’t know, your Honor. I think that is what we are here to determine.

The Court: We are here to determine, as I understand it, who did it, if anyone.

Mr. Haley: Of course, we have a twofold purpose. We are trying to determine whether or not there was a robbery and the second point is, who committed the robbery.

The Court: Don't you think we are getting a little ridiculous, or aren't we?

Id. at 249.

The contrast between those cases and this case is sharp. The trial court did not call the defense position ridiculous (*Bogner*), did not instruct the jury that a corroborating witness did not hear the testimony of the previous witness (*Yanai*), did not take over cross-examination for the prosecutor (*Jackson*) and did not tell the jury that a witness had testified fully (*James*).

3. In any event, the Instruction had no prejudicial effect.

Comments on the evidence in a jury instruction are presumed to be prejudicial and the burden is on the State to show that the defendant was not prejudiced. *State v. Levy*, 156 Wn.2d 709, 725, 132 P.3d 1076 (2006). In this case, the instruction was not prejudicial.

People are well aware that individuals on the internet may assume a false identity. Neither party mentioned the Instruction at all in closing arguments. The defendant was convicted because the texts spoke for themselves. His testimony that he deduced he was a victim of a scam but left his residence to check up on the girl and just happened to bring

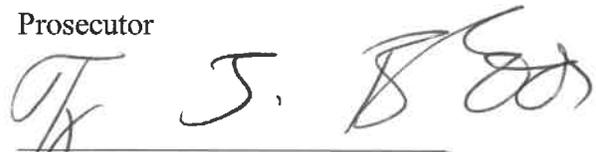
condoms and \$100 with him is incredible. The evidence against the defendant was overwhelming.

IV. CONCLUSION

For the reasons state above, the convictions should be affirmed.

RESPECTFULLY SUBMITTED on January 13, 2020.

ANDY MILLER
Prosecutor

A handwritten signature in black ink, appearing to read "T. J. Bloor", is written over a horizontal line. The signature is stylized and cursive.

Terry J. Bloor, Deputy
Prosecuting Attorney
Bar No. 9044
OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Lenell Nussbaum
Law Office of Lenell Nussbaum, PLLC
2125 Western Ave., Suite 330
Seattle, WA 98121

E-mail service by agreement
was made to the following
parties:
lenell@nussbaumdefense.com

Signed at Kennewick, Washington on January 13, 2020.


Demetra Murphy
Appellate Secretary

Appendices

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Appendix A: Exhibit 3 - Craigslist advertisement

reply

prohibited 

Posted [less than a minute ago](#)

☆ **young looking for older daddy - w4m (Richland)** 

I am young looking for older daddy to take care of this young baby girl. Be real. Be nice, your pic gets mine. let's get lit! I have a daddy fetish and love to take showers, very clean. let's talk. DDF.

- do NOT contact me with unsolicited services or offers

post id: **6209264877**

posted: [less than a minute ago](#)

[email to friend](#)

♥ [best of](#) 

Appendix B: Exhibit 4 - Email correspondence



Denise Collins <sweetdee720@gmail.com>

young looking for older daddy - w4m

12 messages

craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>
To: zkcmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 3:22 PM

Tell me more about you
I'm interested. 35yo. clean, nice, educated and like to spoil you if we click.

Original craigslist post:

<https://kpc.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/mf98eb0b1b3168aca882e9d48d4821e74a9c97b34ab.1447>

Denise Collins <sweetdee720@gmail.com>

To: craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>

Fri, Jul 7, 2017 at 3:42 PM

I am in need of a daddy. I ran away a while ago cuz my mom is a bitch. Just hanging with friends for right now, but just want to have some fun and forget about things. If you want to have some fun with me tell me how and lets chat. I am getting a lot of responses so get me your phone number and we can talk. If you don't like young fun then this isn't for you. Im 13, but I am all woman. And fine AF

Quoted text hidden



IMG_0564.JPG
149K

LO

craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>
To: zkcmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 3:44 PM

Do you like to go on road trip? Camping?

Quoted text hidden

Quoted text hidden

Quoted text hidden

<https://craigslist.org/ml/2b63a1113b304529adc0477386e79f438c252862.362>

Original craigslist post:

<https://kpc.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/7b7331aca340d0b94434b61805fda76b79084db.104>

Denise Collins <sweetdee720@gmail.com>

To: craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>

Fri, Jul 7, 2017 at 3:52 PM

I do like trips and camping, but right now kind of want to get turned up and have some playtime daddy what did you have in mind

Quoted text hidden

craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>
To: zkcmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 4:04 PM

I wanna meet and have fun with you as start and see how things going. Lets meet sunday, can you?

Quoted text hidden

Quoted text hidden

Quoted text hidden

<https://craigslist.org/ml/7a0be050fd47844226441c9bbe15615f1a89156.355>

Original craigslist post:

<https://kpr.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/5451635f78bd6c2fe94ec2939b8d7f92af04fa.1052>

craigslist reply 55a7 <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org>
To: zlkzmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 4:24 PM

And I'll make it worth your time

On Jul 7, 2017 4:04 PM, <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org> wrote:

I wanna meet and have fun with you as start and see how things going. Lets meet sunday. can you?

Quoted text hidden

Quoted text hidden

Quoted text hidden

<https://craigslist.org/ml/7a0f8e050fd4784422644-1c9bbe15615f1a89156.355>

Original craigslist post:

<https://kpr.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/6033fad7e998c82b0dc04773b5bac8ea447cd9ea.1375>

Denise Collins <sweetdee720@gmail.com>

craigslist reply 55a7 <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org>

Fri, Jul 7, 2017 at 4:51 PM

like how can we talk about it in text so its not on CL. sunday works i dont have any plans lol

Quoted text hidden

craigslist reply 55a7 <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org>
To: zlkzmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 4:54 PM

I prefer not to text till we meet. I will make it worth your time and will pay you. Will meet and chat about the details. You clean?

☪

Quoted text hidden

Quoted text hidden

Quoted text hidden

<https://craigslist.org/ml/cb578db9b75c6af1151468c81a40af7e1820b60.1224>

Original craigslist post:

<https://kpr.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/634f01ae0f5d8c331434c54b191fd2b4f3ab45b.69>

craigslist reply 55a7 <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org>
To: zlkzmp-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 4:56 PM

I need to make sure that you are discreet

On Jul 7, 2017 4:54 PM, <55a7357c98fc372f8393a128f70c7c2e@reply.craigslist.org> wrote:

I prefer not to text till we meet. I will make it worth your time and will pay you. Will meet and chat about the details. You clean?

Quoted text hidden

Quoted text hidden

Quoted text hidden

<https://craigslist.org/ml/cb578db9b75c6af1151468c81a40af7e1820b60.1224>

Original craigslist post:

<https://kpr.craigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/52191c0949a3b923a6ac41249ce1f65d5ba38c92.66>

Denise Collins <sweetdee720@gmail.com>
To: craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>

Fri, Jul 7, 2017 at 5:23 PM

i am for sure babe
(Quoted text hidden)

craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>
To: zkczip-6209264877@pers.craigslist.org

Fri, Jul 7, 2017 at 5:24 PM

Give me your number so i can text u love

(Quoted text hidden)
(Quoted text hidden)

(Quoted text hidden)
<https://craigslist.org/ml/cfe475f57c3691b95e164eb98e4b8e3abf676259.1118>

Original craigslist post:

<https://krpcraigslist.org/cas/6209264877.html>

About craigslist mail:

<https://craigslist.org/about/help/email-relay>

Please flag unwanted messages (spam, scam, other):

<https://craigslist.org/ml/68a8de8106fd8c331434c54b797fd254f3a8465.280>

Denise Collins <sweetdee720@gmail.com>
To: craigslist reply 55a7 <55a7357c98fc3728393a128f70c7c2e@reply.craigslist.org>

Fri, Jul 7, 2017 at 5:52 PM

509-955-7176 tell me your name and text the word camping so i know its you daddy
(Quoted text hidden)

Appendix C: Exhibit 8 - Text message log

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/07	05:53:36 PM	PD1509-855-9205	SMS	Incoming	Camping.... Jay		2017-07-07_17-53-36_PDT.txt	
2017/07/07	05:56:16 PM	PD1509-855-9205	SMS	Outgoing	hey daddy so tell me what you want to do with me.		2017-07-07_17-56-16_PDT.txt	
2017/07/07	05:56:57 PM	PD1509-855-9205	SMS	Incoming	Will get a room and we can have fun, me and u		2017-07-07_17-56-57_PDT.txt	
2017/07/07	05:57:41 PM	PD1509-855-9205	SMS	Outgoing	i have a room silly, just come here. im in Richland.		2017-07-07_17-57-41_PDT.txt	
2017/07/07	05:58:58 PM	PD1509-855-9205	SMS	Incoming	Even better		2017-07-07_17-58-58_PDT.txt	
2017/07/07	05:59:02 PM	PD1509-855-9205	SMS	Incoming	I cant till sunday		2017-07-07_17-59-02_PDT.txt	
2017/07/07	05:59:07 PM	PD1509-855-9205	SMS	Incoming	Have sexy pic?		2017-07-07_17-59-07_PDT.txt	
2017/07/07	06:04:33 PM	PD1509-855-9205	SMS	Incoming	???		2017-07-07_18-04-33_PDT.txt	
2017/07/07	06:06:03 PM	PD1509-855-9205	SMS	Outgoing	i dont send nudes		2017-07-07_18-06-03_PDT.txt	
2017/07/07	06:06:27 PM	PD1509-855-9205	SMS	Incoming	So where u at and how much you thinking?		2017-07-07_18-06-27_PDT.txt	
2017/07/07	06:06:37 PM	PD1509-855-9205	SMS	Incoming	I need pic, don't have to be nude		2017-07-07_18-06-37_PDT.txt	
2017/07/07	06:23:36 PM	PD1509-855-9205	MMS	Outgoing			2017-07-07_18-23-36_PDT_1.jp	6e21f286d003c5981be816a6cba35a68
2017/07/07	06:23:48 PM	PD1509-855-9205	SMS	Outgoing	depends on what you want to do with me daddy. tell me		2017-07-07_18-23-48_PDT.txt	
2017/07/07	06:24:14 PM	PD1509-855-9205	SMS	Incoming	Please pic with no addon lol		2017-07-07_18-24-14_PDT.txt	
2017/07/07	06:24:31 PM	PD1509-855-9205	SMS	Incoming	I want u in my arms and to have you....		2017-07-07_18-24-31_PDT.txt	
2017/07/07	06:32:07 PM	PD1509-855-9205	SMS	Outgoing	well come get me then daddy		2017-07-07_18-32-07_PDT.txt	
2017/07/07	06:32:37 PM	PD1509-855-9205	SMS	Incoming	I will baby girl		2017-07-07_18-32-37_PDT.txt	
2017/07/07	06:32:41 PM	PD1509-855-9205	SMS	Incoming	Where u at?		2017-07-07_18-32-41_PDT.txt	
2017/07/07	06:34:35 PM	PD1509-855-9205	SMS	Outgoing	my friends place in richland		2017-07-07_18-34-35_PDT.txt	
2017/07/07	06:35:02 PM	PD1509-855-9205	SMS	Incoming	No sweetie, me and u alonr, i will get a room then		2017-07-07_18-35-02_PDT.txt	
2017/07/07	06:36:31 PM	PD1509-855-9205	SMS	Outgoing	shes gone till Monday i have the apartmethn to myself daddy		2017-07-07_18-36-31_PDT.txt	
2017/07/07	06:37:00 PM	PD1509-855-9205	SMS	Incoming	Oh sounds good then, i can meet u sunday around 2pm		2017-07-07_18-37-00_PDT.txt	
2017/07/07	06:37:10 PM	PD1509-855-9205	SMS	Incoming	What do i need to bring?		2017-07-07_18-37-10_PDT.txt	

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/07	06:40:40 PM	PD1509-855-9205	SMS	Outgoing	how long do you want to hang out?		2017-07-07_18-40-40_PDT.txt	
2017/07/07	06:41:13 PM	PD1509-855-9205	SMS	Incoming	Like 30 minutes or so		2017-07-07_18-41-13_PDT.txt	
2017/07/07	06:43:27 PM	PD1509-855-9205	SMS	Outgoing	thats all daddy? \$100 and bring condoms daddy. i really like strawberry flavored lube 😊		2017-07-07_18-43-27_PDT.txt	
2017/07/07	06:44:04 PM	PD1509-855-9205	SMS	Incoming	So how old are u again?		2017-07-07_18-44-04_PDT.txt	
2017/07/07	06:44:58 PM	PD1509-855-9205	SMS	Outgoing	13 silly daddy		2017-07-07_18-44-58_PDT.txt	
2017/07/07	06:45:58 PM	PD1509-855-9205	SMS	Incoming	How tight you are baby		2017-07-07_18-45-58_PDT.txt	
2017/07/07	06:51:26 PM	PD1509-855-9205	SMS	Outgoing	i dunno?? Ive only done this once before		2017-07-07_18-51-26_PDT.txt	
2017/07/07	06:52:01 PM	PD1509-855-9205	SMS	Incoming	Mmmm		2017-07-07_18-52-01_PDT.txt	
2017/07/07	06:52:15 PM	PD1509-855-9205	SMS	Incoming	I will get you on Sunday baby girl		2017-07-07_18-52-15_PDT.txt	
2017/07/07	06:52:50 PM	PD1509-855-9205	SMS	Outgoing	u gonna teach me anything new daddy?		2017-07-07_18-52-50_PDT.txt	
2017/07/07	06:53:30 PM	PD1509-855-9205	SMS	Incoming	Yes i can....		2017-07-07_18-53-30_PDT.txt	
2017/07/07	06:54:45 PM	PD1509-855-9205	SMS	Outgoing	tell me daddy		2017-07-07_18-54-45_PDT.txt	
2017/07/07	07:09:55 PM	PD1509-855-9205	SMS	Incoming	Do you like swimming?		2017-07-07_19-09-55_PDT.txt	
2017/07/07	07:22:21 PM	PD1509-855-9205	SMS	Outgoing	yes		2017-07-07_19-22-21_PDT.txt	
2017/07/07	07:33:31 PM	PD1509-855-9205	SMS	Outgoing	whyd u ask if I like swimming?		2017-07-07_19-33-31_PDT.txt	
2017/07/07	08:26:57 PM	PD1509-855-9205	SMS	Incoming	I habe pool and hot tub in my house		2017-07-07_20-26-57_PDT.txt	
2017/07/07	08:29:10 PM	PD1509-855-9205	SMS	Outgoing	oh very nice. u gonna take me to ur house someday daddy?		2017-07-07_20-29-10_PDT.txt	
2017/07/07	08:29:25 PM	PD1509-855-9205	SMS	Incoming	I would love to		2017-07-07_20-29-25_PDT.txt	
2017/07/07	08:31:16 PM	PD1509-855-9205	SMS	Outgoing	you gonna be my sugar daddy lol?		2017-07-07_20-31-16_PDT.txt	
2017/07/07	08:31:33 PM	PD1509-855-9205	SMS	Incoming	Will see lol		2017-07-07_20-31-33_PDT.txt	
2017/07/07	08:49:00 PM	PD1509-855-9205	SMS	Outgoing	ok daddy		2017-07-07_20-49-00_PDT.txt	
2017/07/08	11:57:23 AM	PD1509-855-9205	SMS	Incoming	Hey, what u doin?		2017-07-08_11-57-23_PDT.txt	
2017/07/08	11:58:01 AM	PD1509-855-9205	SMS	Outgoing	hey just woke up		2017-07-08_11-58-01_PDT.txt	

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/08	11:59:08 AM	PD1509-855-9205	SMS	Incoming	Well good morning sweetheart		2017-07-08_11-59-08_PDT.txt	
2017/07/08	11:59:43 AM	PD1509-855-9205	SMS	Outgoing	good morning daddy		2017-07-08_11-59-43_PDT.txt	
2017/07/08	12:00:27 PM	PD1509-855-9205	SMS	Incoming	What r u upto this evening?		2017-07-08_12-00-27_PDT.txt	
2017/07/08	12:01:00 PM	PD1509-855-9205	SMS	Outgoing	lookin for a date 😊		2017-07-08_12-01-00_PDT.txt	
2017/07/08	12:01:17 PM	PD1509-855-9205	SMS	Incoming	No need.... You are mine ;)		2017-07-08_12-01-17_PDT.txt	
2017/07/08	12:01:25 PM	PD1509-855-9205	SMS	Incoming	I will get u		2017-07-08_12-01-25_PDT.txt	
2017/07/08	12:02:48 PM	PD1509-855-9205	SMS	Outgoing	whachu gonna do with me daddy		2017-07-08_12-02-48_PDT.txt	
2017/07/08	12:03:04 PM	PD1509-855-9205	SMS	Incoming	Wait and see baby ;)		2017-07-08_12-03-04_PDT.txt	
2017/07/08	12:03:15 PM	PD1509-855-9205	SMS	Incoming	I will take care of you		2017-07-08_12-03-15_PDT.txt	
2017/07/08	12:06:13 PM	PD1509-855-9205	SMS	Outgoing	tell me how daddy sunday might be to long for me to wait		2017-07-08_12-06-13_PDT.txt	
2017/07/08	03:24:25 PM	PD1509-855-9205	SMS	Incoming	Hey, what r u doin at 5?		2017-07-08_15-24-25_PDT.txt	
2017/07/08	03:55:33 PM	PD1509-855-9205	SMS	Incoming	Can u meet now?		2017-07-08_15-55-33_PDT.txt	
2017/07/08	03:58:12 PM	PD1509-855-9205	SMS	Outgoing	ya. what u want to do daddy i like to be prepared?		2017-07-08_15-58-12_PDT.txt	
2017/07/08	03:58:33 PM	PD1509-855-9205	SMS	Incoming	Take a shower baby		2017-07-08_15-58-33_PDT.txt	
2017/07/08	03:58:39 PM	PD1509-855-9205	SMS	Incoming	Can u host now?		2017-07-08_15-58-39_PDT.txt	
2017/07/08	03:58:51 PM	PD1509-855-9205	SMS	Incoming	Do you drink?		2017-07-08_15-58-51_PDT.txt	
2017/07/08	04:00:23 PM	PD1509-855-9205	SMS	Outgoing	duh lol		2017-07-08_16-00-23_PDT.txt	
2017/07/08	04:00:32 PM	PD1509-855-9205	SMS	Incoming	What u like?		2017-07-08_16-00-32_PDT.txt	
2017/07/08	04:00:47 PM	PD1509-855-9205	SMS	Outgoing	fireball		2017-07-08_16-00-47_PDT.txt	
2017/07/08	04:01:00 PM	PD1509-855-9205	SMS	Incoming	I'll get some		2017-07-08_16-01-00_PDT.txt	
2017/07/08	04:01:08 PM	PD1509-855-9205	SMS	Incoming	What's your address		2017-07-08_16-01-08_PDT.txt	
2017/07/08	04:01:35 PM	PD1509-855-9205	SMS	Outgoing	i have some other options tonight daddy so i need to no what ur looking for and \$\$		2017-07-08_16-01-35_PDT.txt	
2017/07/08	04:02:06 PM	PD1509-855-9205	SMS	Incoming	I want u, amd will give u 100		2017-07-08_16-02-06_PDT.txt	
2017/07/08	04:03:38 PM	PD1509-855-9205	SMS	Outgoing	can u bring condoms i cant get prego dadddy		2017-07-08_16-03-38_PDT.txt	
2017/07/08	04:03:51 PM	PD1509-855-9205	SMS	Incoming	I have some		2017-07-08_16-03-51_PDT.txt	
2017/07/08	04:05:05 PM	PD1509-855-9205	SMS	Outgoing	u into anything kinky?		2017-07-08_16-05-05_PDT.txt	
2017/07/08	04:05:29 PM	PD1509-855-9205	SMS	Incoming	I want u bad....		2017-07-08_16-05-29_PDT.txt	

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/08	04:06:23 PM	PD1509-855-9205	SMS	Incoming	Wanna feel u, every hole of u....		2017-07-08_16-06-23_PDT.txt	
2017/07/08	04:07:16 PM	PD1509-855-9205	SMS	Outgoing	anal would more daddy but that sounds good		2017-07-08_16-07-16_PDT.txt	
2017/07/08	04:07:43 PM	PD1509-855-9205	SMS	Incoming	Give me the address		2017-07-08_16-07-43_PDT.txt	
2017/07/08	04:10:10 PM	PD1509-855-9205	SMS	Outgoing	where u comin from? im in richland		2017-07-08_16-10-10_PDT.txt	
2017/07/08	04:10:26 PM	PD1509-855-9205	SMS	Incoming	Kennewick		2017-07-08_16-10-26_PDT.txt	
2017/07/08	04:10:48 PM	PD1509-855-9205	SMS	Incoming	What's your address		2017-07-08_16-10-48_PDT.txt	
2017/07/08	04:11:08 PM	PD1509-855-9205	SMS	Outgoing	can i get a pic daddy so i know who to look for?		2017-07-08_16-11-08_PDT.txt	
2017/07/08	04:14:16 PM	PD1509-855-9205	SMS	Incoming	I have to be discreet		2017-07-08_16-14-16_PDT.txt	
2017/07/08	04:14:28 PM	PD1509-855-9205	SMS	Incoming	I will text you before knock on the door		2017-07-08_16-14-28_PDT.txt	
2017/07/08	04:15:14 PM	PD1509-855-9205	SMS	Outgoing	i understnad. but im nervous to give someone my address i dont even know what u look like daddy. i dont wanna get murdered lol		2017-07-08_16-15-14_PDT.txt	
2017/07/08	04:15:31 PM	PD1509-855-9205	SMS	Incoming	No you won't baby		2017-07-08_16-15-31_PDT.txt	
2017/07/08	04:15:58 PM	PD1509-855-9205	SMS	Incoming	I'm brown skin, 5'7" hwp, just next door guy		2017-07-08_16-15-58_PDT.txt	
2017/07/08	04:18:08 PM	PD1509-855-9205	SMS	Outgoing	k. theres a 7-11 by my house on wright st would u bring me a slurpee??? pleases???? and some strawberry lube if they have it its my fav 😊		2017-07-08_16-18-08_PDT.txt	
2017/07/08	04:19:40 PM	PD1509-855-9205	SMS	Incoming	Nope... I will come over to u then i can get u whatever you like		2017-07-08_16-19-40_PDT.txt	
2017/07/08	04:21:32 PM	PD1509-855-9205	SMS	Incoming	Sweetheart, are you gonna meet me or just texting?		2017-07-08_16-21-32_PDT.txt	

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/08	04:22:54 PM	PD1509-855-9205	SMS	Outgoing	ill walk and meet u somewhere by my house is that ok? then when i no ur not a flake we can go to the apartment. my friend told me to do it this way she got beat up once bad		2017-07-08_16-22-54_PDT.txt	
2017/07/08	04:23:18 PM	PD1509-855-9205	SMS	Incoming	Where?		2017-07-08_16-23-18_PDT.txt	
2017/07/08	04:24:29 PM	PD1509-855-9205	SMS	Outgoing	theres a car wash close ill look up the name		2017-07-08_16-24-29_PDT.txt	
2017/07/08	04:27:09 PM	PD1509-855-9205	SMS	Outgoing	its called liberty car wash		2017-07-08_16-27-09_PDT.txt	
2017/07/08	04:28:07 PM	PD1509-855-9205	SMS	Incoming	Whats the apartment complex name?		2017-07-08_16-28-07_PDT.txt	
2017/07/08	04:29:05 PM	PD1509-855-9205	SMS	Outgoing	shoreline		2017-07-08_16-29-05_PDT.txt	
2017/07/08	04:30:06 PM	PD1509-855-9205	SMS	Incoming	Send me a pic of what you will be look like and can u be there at 4:50?		2017-07-08_16-30-06_PDT.txt	
2017/07/08	04:31:51 PM	PD1509-855-9205	SMS	Outgoing	k hold on what u drivin?		2017-07-08_16-31-51_PDT.txt	
2017/07/08	04:32:06 PM	PD1509-855-9205	SMS	Incoming	Silver truck		2017-07-08_16-32-06_PDT.txt	
2017/07/08	04:35:33 PM	PD1509-855-9205	MMS	Outgoing	im wearing a grey tank top and black jeans		2017-07-08_16-35-33_PDT_1.jp	9906e9356f815ac6c5377e234f065dcb
2017/07/08	04:37:07 PM	PD1509-855-9205	SMS	Incoming	On my way, be there like 4:50		2017-07-08_16-37-07_PDT.txt	
2017/07/08	04:38:23 PM	PD1509-855-9205	SMS	Outgoing	k tell me when ur there and i will walk over daddy it will take me like 2 min		2017-07-08_16-38-23_PDT.txt	
2017/07/08	04:54:39 PM	PD1509-855-9205	SMS	Outgoing	you there yet daddy?		2017-07-08_16-54-39_PDT.txt	
2017/07/08	04:57:47 PM	PD1509-855-9205	SMS	Incoming	Almost		2017-07-08_16-57-47_PDT.txt	
2017/07/08	05:02:35 PM	PD1509-855-9205	SMS	Outgoing	where are u daddy? or should i go get in the shower??		2017-07-08_17-02-35_PDT.txt	
2017/07/08	05:07:45 PM	PD1509-855-9205	SMS	Incoming	Im here, come over		2017-07-08_17-07-45_PDT.txt	
2017/07/08	05:09:48 PM	PD1509-855-9205	SMS	Outgoing	can u send a pic of the car wash so i no ur really there it super hot out lol		2017-07-08_17-09-48_PDT.txt	
2017/07/08	05:11:19 PM	PD1509-855-9205	SMS	Incoming	I dont have one lol		2017-07-08_17-11-19_PDT.txt	
2017/07/08	05:11:23 PM	PD1509-855-9205	SMS	Incoming	I am here		2017-07-08_17-11-23_PDT.txt	

Detail for 509-955-7176

Date	Time	Number	Type	Direction	Content	Min.	File Name	MD5 Hash
2017/07/08	05:12:34 PM	PD1509-855-9205	SMS	Outgoing	take a pic if ur there what do u mean u dont have one?		2017-07-08_17-12-34_PDT.txt	
2017/07/08	05:14:51 PM	PD1509-855-9205	SMS	Incoming	I am here, at the carwash		2017-07-08_17-14-51_PDT.txt	
2017/07/08	05:15:36 PM	PD1509-855-9205	SMS	Incoming	Send pictures to frankwa000 at frankwa000@textnow.me		2017-07-08_17-15-36_PDT.txt	
2017/07/08	05:15:38 PM	PD1509-855-9205	SMS	Incoming	Media Message: https://api.textnow.me/media/?h=59ee11a51a7e19da3ff18c354a60c509edc5033029d0b37d706b650a3196c0ca		2017-07-08_17-15-38_PDT.txt	
2017/07/08	05:17:45 PM	PD1509-855-9205	SMS	Incoming	U coming?		2017-07-08_17-17-45_PDT.txt	
2017/07/08	05:17:47 PM	PD1509-855-9205	SMS	Outgoing	whats going on daddy its hot out here just come over here its building G		2017-07-08_17-17-47_PDT.txt	
2017/07/08	05:25:54 PM	PD1509-855-9205	SMS	Outgoing	hello daddy?		2017-07-08_17-25-54_PDT.txt	
2017/07/08	05:29:19 PM	PD1509-855-9205	SMS	Outgoing	test		2017-07-08_17-29-19_PDT.txt	

Appendix D: Third Amended Information

ORIGINAL

JOSIE DELVIN
BENTON COUNTY CLERK

NOV 16 2018

FILED

VP2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

STATE OF WASHINGTON,

Plaintiff,

NO. 17-1-00793-9

vs.

YASIR M MAJEED,

DOB: 01/02/1982,

SID: ;

FBI: ;

DL: MAJEEYM187BB,

Defendant.

THIRD AMENDED
INFORMATION

COMES NOW, ANDY MILLER, Prosecuting Attorney for Benton County,
State of Washington, and by this his Information accuses

YASIR M MAJEED

of the crime(s) of: ATTEMPTED RAPE OF A CHILD IN THE SECOND DEGREE, RCW
9A.44.076 AND RCW 9A.28.020(1);

COMMERCIAL SEXUAL ABUSE OF A MINOR, RCW 9.68A.100(1)(b);

COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, RCW 9.68A.090(2),
committed as follows, to-wit:

COUNT I

That the said **YASIR M MAJEED** in the County of Benton, State of
Washington, on or about the 8th day of July, 2017, in violation of RCW
9A.44.076, with intent to commit the crime of Rape of a Child in the
Second Degree, committed an act, to wit: agreed to meet a fictitious
person the defendant believed was a thirteen (13) year old female for
sexual intercourse and did arrive at the predetermined location with
condoms, which was a substantial step toward that crime, and the
defendant was at least thirty-six months older than the fictitious
minor and that the defendant believed the fictitious minor was a
person who was at least twelve years of age but less than fourteen
years of age and not married to the defendant, contrary to the form of
the Statute in such cases made and provided, and against the peace and
dignity of the State of Washington.

COUNT II

That the said YASIR M MAJEED in the County of Benton, State of Washington, during the time intervening between the 7th day of July, 2017, and the 8th day of July, 2017, in violation of RCW 9.68A.100(1)(b), did pay or agree to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him, to wit: did agree to pay a person the defendant believed was a thirteen (13) year old female \$100 for sexual conduct, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

COUNT III

That the said YASIR M MAJEED in the County of Benton, State of Washington, during the time intervening between the 7th day of July, 2017, and the 8th day of July, 2017, in violation of RCW 9.68A.090(2), did communicate with a person the defendant believed was thirteen year old "Denise," a minor, for immoral purposes, to wit: email and text message regarding sexual intercourse, and that communication was through the sending of an electronic communication, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Kennewick, Washington on November 13th, 2018.

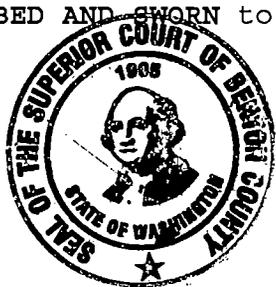
ANDY MILLER
Prosecuting Attorney

Andrew M. Howell
Andrew M. Howell, #45034
Deputy Prosecuting Attorney
OFC ID 91004

STATE OF WASHINGTON)
 ss
County Of Benton)

ANDREW M. HOWELL, being first duly sworn on oath, says he is the duly appointed, acting and qualified Deputy Prosecuting Attorney in and for Benton County, that he has read the foregoing First Amended Information, knows the contents thereof, and believes the same to be true.

SUBSCRIBED AND SWORN to before me this 13th day of November, 2018.



JOSIE DELVIN
County Clerk/Clerk of Benton Co. Superior Court
By Josie Delvin

Appendix E: RCW 9.68A.100

RCW 9.68A.100

Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.

- (1) A person is guilty of commercial sexual abuse of a minor if:
 - (a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
 - (b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
 - (c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.
- (2) Commercial sexual abuse of a minor is a class B felony punishable under chapter **9A.20** RCW.
- (3) In addition to any other penalty provided under chapter **9A.20** RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW **9A.88.130** and **9A.88.140**.
- (4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.
- (5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter **9A.44** RCW.

[**2017 c 231 § 3; 2013 c 302 § 2; 2010 c 289 § 13; 2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.**]

NOTES:

Finding—2017 c 231: See note following RCW **9A.04.080**.

Effective date—2013 c 302: See note following RCW **9.68A.090**.

Findings—Intent—1999 c 327: See note following RCW **9A.88.130**.

Additional requirements: RCW **9A.88.130**.

Vehicle impoundment: RCW **9A.88.140**.

Appendix F: Instruction No. 15

INSTRUCTION NO. 15

To convict the defendant of the crime of commercial sexual abuse of a minor, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about July 7-8, 2017, the defendant agreed to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him; and
- (2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Appendix G: Instruction No. 17

INSTRUCTION NO. 17

To convict the defendant of the crime of communicating with a minor for immoral purposes, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about July 7-8, 2017, the defendant communicated with another person for immoral purposes of a sexual nature;
- (2) That the defendant believed the other person was a minor;
- (3) The defendant sent another person an electronic communication for immoral purposes; and
- (4) That this act occurred in the State of Washington;

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

BENTON COUNTY PROSECUTOR'S OFFICE

January 13, 2020 - 4:32 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36591-3
Appellate Court Case Title: State of Washington v. Yasir M. Majeed
Superior Court Case Number: 17-1-00793-9

The following documents have been uploaded:

- 365913_Briefs_20200113163132D3842335_8020.pdf
This File Contains:
Briefs - Respondents
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- lenell@nussbaumdefense.com

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Filing on Behalf of: Terry Jay Bloor - Email: terry.bloor@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

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Phone: (509) 735-3591

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